

**Records of the
Louisiana Constitutional
Convention of 1973:
Convention Transcripts**

VOLUME VII

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Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts

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VOLUME SEVEN

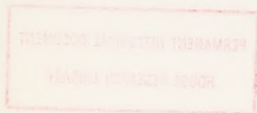
by

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

Moise W. Dennery, Chairman
A. Edward Hardin, Coordinator of Research



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Third Days Proceedings—September 7, 1973

Friday, September 7, 1973

ROLL CALL

Mr. A. Jackson: Chairman, ladies and gentlemen, we thank thee again for the privilege of gathering here. We hope that our service today will be to Thy liking and will. We ask that You give us the wisdom, the grace to do the job as You think we ought to do it. Make us be charitable to one another in our remarks and our words and our actions. We ask all of this in the name of Jesus our Savior. Amen

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. A. Jackson: Mr. Chairman, ladies and gentlemen, as Chairman of the Committee on Bill of Rights and Elections, I want to express my appreciation for the committee for the full consideration that you are giving to the sections that we have proposed, and I want to tell you that the committee, again, appreciates the wisdom and the genius of this body as it relates to the sections before you. I think up to this point we have done a very fine job with the Declaration of Rights Article, and the committee is not distressed nor exasperated over the proliferation of amendments. But I do think that it's in the interest of this body and of this state that I should say that on yesterday we did arrive at a point where everybody was yelling and shouting at each other, including myself. I want to apologize to the body for my ill-considered remarks because they were not germane and didn't add anything to the consideration before us. I think that is also true of a lot of other remarks that were made from this place. As the chairman of this committee, I have my responsibility, I think to say to you that I think that if we are going to write the kind of constitution that's going to be in the interests of the people of this state, that it behooves all of us, members of this committee and members of committees that will follow, to try and give our full attention to what is before us and what is in the interest of this state. It's not a white issue, it's not a black issue, it's not a red issue, not is it a brown issue. It's a people's issue. It's the people of Louisiana that we are concerned about. So I would ask today that we would leave the shouting matches for the wrestling matches on Wednesday night. Somebody said we have them here all day, but I think that this is not an appropriate place for us to take out our own personal feelings on other delegates who are working here to try and produce a set of organic law that will guide and direct this state. So I would ask, as the chairman of this committee that we would again return to the business before us, and with the kind of precise and calm deliberation that we give the people of this state a document that will enable them to usher in a whole new creative atmosphere that will not only be humane and just, but that will insure a secure quality of life for all of the people of this state. Thank you so much, and we ask for your consideration again this morning.

Personal Privilege

Mr. Staggs: Mr. Chairman and fellow delegates, when I was arrested in 1965, I was in jail for six years. Mr. Stinson's question was not answered, so he took the microphone and he said, "I was representing, a lawyer who had never tried a criminal case. Well, that was erroneous. What I did was represent a man whose life was in jeopardy."

criminal case; that is, a man whose life was in jeopardy. Yet, that man, after all my efforts, stayed in jail for six years. Well, on the seventeenth of September, 1965, on September 17, which was Monday week of 1973, that man is still in jail except that he is now in Angola instead of in Caddo Parish because after a trial by jury, he and his codefendants were found guilty of the crime with which they were charged. There were three trips to the Louisiana Supreme Court by his appointed defense counsel. There was one application for writs to the United States Supreme Court which was successful, and by means of which the Louisiana conviction and the action of the Louisiana Supreme Court was reversed by the United States Supreme Court, and a new trial was ordered because of the deficiencies of the trial they had received in the beginning. The point I'm making is that while Mr. Stinson might have believed that man had less than justice, it is my contention that he got the fullest measure of justice which our system can provide, and that is where the system is deficient. The last time I came to this microphone I told you, or one previous occasion, we were talking about a public defender system in this state, and yesterday, made a very dramatic speech, wherein he talked about the power of the district attorney and his numerous assistants and his numerous investigators. He asked, "Couldn't we do more?" Later in this day, you will have the opportunity to talk again about the public defender system for this state which will instill into the criminal justice system a defense system at least somewhere in the same ball park with the prosecution system. This is what the case of State v. Anderson did for me—it taught a lawyer who had not had a great interest in criminal justice to have a sharper interest in the system of the delivery of criminal justice, that where that system was deficient, how it could be bettered. That's where this convention itself can make a massive contribution to the Louisiana system of criminal justice, is to try in some measure as we can to place into the scale of justice something in the equivalent of defense to match that of the prosecution. Yes, if Mr. Stinson had told you the whole story, he would have told you where my client is now, but why he is there, and of the scale of the efforts that were made to prevent him from being faced with the electric chair. He is no longer faced with that problem, but he is still in jail.

Personal Privilege

Mr. Staggs: Just one second. Now, Mr. Staggs, if you had listened correctly to me yesterday, I merely said that if they had set forth in detail, you would not have had to do so much work to try to get it. That was the point. I had no way of knowing where your client was at the present time. I tried to find out. That one point that you would have been aided if it had been set forth in particularity so you could see, but you had to work and work to get it.

PETITIONS, MEMORIALS, AND COMMUNICATIONS

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter: Committee Proposal No. 25, by Delegate Jackson, Chairman on behalf of the Committee on Bill of Rights, which is a substitute for Committee Proposal No. 2, by the same delegate on behalf of the committee.

A proposal to provide a Preamble and a Declaration of Rights to the constitution.

The status of the proposal at this time is that the convention had adopted the proposed Preamble, had adopted Sections 1 through 6 as amended, has voted to delete, at the present time, Section 7 and Sections 9, 10, and 11, and presently has under consideration Section 12, which at this juncture

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has been twice amended.

Amendment

Mr. Poynter The next amendment is sent up by Delegates Kelly and Jack.

Amendment No. 1. On Page 4, line 15, delete Amendment No. 1 proposed by Delegate Burson and adopted by the convention on September 6, 1973.

Mr. Chairman, I might say there has been some question as to the full implication of the amendment. On basic interpretation of the amendatory process, the effect of this would be to delete any reference to the word either "precisely" or "reasonably" so that the portion of the sentence would read, "the accused shall be informed." The present word is "reasonably" which was added after taking out the word "precisely" by the amendment proposed by Delegate Burson. The effect of this amendment, by deleting the word "reasonably," in effect, would be to have neither word there.

Explanation

Mr. Kelly Mr. Chairman and ladies and gentlemen of the convention, this has been kicked around quite a bit and I'm not going to take a great deal of your time on it. First, this amendment would simply remove the word "reasonably" which has been inserted. On line 15 of page 4, it presently reads, "shall be reasonably informed of the nature and cause of the accusation against him." This amendment will do nothing more than delete Delegate Burson's injection of "reasonable" in there. Now, I might say that we're not trying through this amendment, and it's my understanding from the Clerk that this will not restore the word "precisely." We're not trying to put "particularly," "completely," or anything else. What I think we have done, at this particular point, is reduce the rights of the individual in this particular case by putting "reasonably informed." I'd like to refer you to Article I, Section 10, of the 1921 Constitution, and this is what it reads: "In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him." Now, that's the law that we've been operating under, and that's the law, I think, that if we are going to do anything, let's continue operating under that particular language. I know what it means. I might add that this is not, by way of introduction of this amendment, has no intention of trying to write free trial discovery devices in criminal cases into the constitution. It's been in the constitution, I assume, since 1921. The convention has apparently emphasized, over the past day or two, that they do not want to write discovery devices in criminal cases into the constitution, and this is a matter than can be left to the legislature. All this does, it simply says what I think we want to say. It says, "In all criminal prosecutions, the accused shall be informed of the nature" We're not going to say he is ~~supposed to be~~ precisely informed, reasonably informed. I mean you are either informed or you're not informed, so I submit this to you.

Questions

Mr. Tate Mr. Kelly, in restoring the language of the present constitution, from the debate yesterday, I do not understand you to mean to reinstate the very technical and independence under that language that said the Bill of Information of the indictment had to contain a certain amount of detail that couldn't be waived. Is that . . .

Mr. Kelly No, sir. That's not the intent.

Mr. Tate It's not that independent, but independent that jurisprudence.

Mr. Kelly That's correct.

Mr. Roemer Delegate Kelly, if I understand what you're trying to do, you are trying to get around a similar incident to saying like "reasonably

accurate." What does that mean to you, "reasonably, accurate"?

Mr. Kelly Well, of course, Buddy, that's less than accurate, that's for sure.

Mr. Roemer That's exactly right, so you are saying that "reasonably informed" is less than informed. Isn't that what you are trying to say?

Mr. Kelly That's what we are trying to get around.

Mr. Gravel Mr. Kelly, as I understand your amendment, it would, of course, delete the amendment of Mr. Burson that was adopted yesterday. Now, if I vote in favor of your amendment, just as a point of clarity I'd like to have this determined, in favor of your amendment, it would restore, would it not, the word "precisely" to the place where it was before the Burson amendment was adopted?

Mr. Kelly Now, I discussed this, Mr. Gravel, with Mr. Poynter on this particular point. I am informed by the Clerk that it will not. In other words, if my amendment passes, the language on line 15 of page 4 will now read, "shall be informed." It will not restore the word "precisely."

Mr. Gravel Well, this is one of the very few times, I guess, in my life that I have disagreed with Mr. Poynter, but I think if we delete the Burson amendment, unless I'm not clear on what it provided, that we are then reinstating the committee language. I would suggest as a technical matter, and in an abundance of precaution, and in order to be fair, that we add to your amendment, Amendment No. 2, which would then delete the word "precisely" after the restoration of the language that was deleted by the Burson amendment. I think that may be necessary.

Mr. Kelly I have no objection to that, and I meant if the convention is willing to do that, well, that's fine.

Mr. Gravel Mr. Chairman, may I ask for a ruling from the Chair? Then, one way or the other we can be sure what we are doing here because I do have some confusion about it. If there is a clear ruling and that's what the result of it will be, then, okay. Either we have to have a clear ruling from the Chair, in my judgment, or we have to have an Amendment No. 2 to accomplish what Mr. Kelly wants to do.

Mr. Henry Why don't I just rule? I'm going to rule that we'll withdraw the amendment and we'll make the change. There is nothing wrong with it, but that will . . .

Point of Order

Mr. Jenkins Point of order, Mr. Chairman. Would we be setting a dangerous precedent by ~~providing~~ now that a clearly established rule of parliamentary procedure is not the rule, and ~~that we~~ make such an amendment as Mr. Gravel suggests? When we take off an amendment, it's standard parliamentary procedure that it does not reinstate the former language. If we start thinking that we have to do that, I see in the future all sorts of dangers that might arise. Now, there is no doubt about Mr. Poynter's interpretation of this procedure, is there?

Mr. Henry There is no doubt about Mr. Poynter's interpretation of this or most any other thing, but I think it will clear up everybody's mind to go ahead and withdraw it and resubmit the amendment. Mr. Jenkins.

Amendment

Mr. Poynter Amendment No. 1 [by

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Page 4, line 15, delete Amendment No. 1 proposed by Delegate Burson and adopted by the convention on September 6, 1973, and on page 4, line 15, after the word "shall be" strike out the word "reasonably." Strike out the word "precisely," excuse me.

Explanation

Mr. Kelly Well, I think everyone understands the intent of the amendment, and the only other thing that I have to add is that I have talked with Mr. Burson, who was the author of the amendment that inserted the word "reasonably," and he says he has no objection to this particular amendment. It is my understanding from talking with Mr. Stinson and Mr. Roy, and I assume they have polled the Committee on the Bill of Rights, that the committee has no objection to it. I have nothing more to add.

Point of Order

Mr. Deshotels Mr. Chairman, I raise a point of order, please. My question to the Chair is would not Amendment No. 1, I'm not talking about Amendment No. 2, but Amendment No. 1, would it not be a reconsideration of Mr. Jack Burson's amendment?

Mr. Henry Not at all, Mr. Deshotels, because it does not accomplish the same thing as did the Burson amendment.

Mr. Deshotels But, Mr. Chairman, doesn't it accomplish the same thing that would have been accomplished if his amendment had failed?

Mr. Henry Not in my judgment, no, sir.

Mr. Deshotels Will the word "precisely," be struck out?

Point of Information

Mr. Jack I want to state in the first part of the question, I think Mr. Poynter is correct, but if we are going to do what we are getting ready to do now, we are sure enough going to be in a mess. If we are going to change this instead of going right like Mr. Burson's and my amendment, I suggest we take out the whole section, take out all words beginning on line 14 with the words "In all criminal prosecutions," and go through the period on sixteen and insert therein the following words, "In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him." That way, you spell it out—third grade; everybody should get it. How about that, Mr. Poynter?

Mr. Poynter Mr. Jack and members of the convention, I, frankly, my understanding would be that the amendment as originally drawn would have had the effect of doing what the author wanted to do. I, personally, have no problems and an abundance of clarity and assurance to the delegates of drafting it any way that you all are most satisfied that you have said what you want to say. But a set of amendments, in essence, constitutes nothing more than a set of instructions to me and to the enrolling room, so that when this proposal is in fact enrolled, your intentions and desires shall be effected. I can assure you that either the way it was drawn the first time or the way now that Mr. Kelly has amended it as suggested by Mr. Gravel, or if you prefer, the way that Mr. Jack has suggested, all three will instruct me, if I understood Mr. Jack correctly, anyway, to do the same thing; that is, namely, have line 15 read "shall be informed of the nature and cause of the." I'm satisfied, at least by the first two, and if I understand Mr. Jack correctly, the effect would all be the same. Now, I didn't hear everything that Mr. Jack said.

Mr. Kelly I think it would not be appropriate, Mr. Leigh.

Closing

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, I don't want to take your time up unnecessarily. I simply wanted to indicate that I'm in favor of this amendment because it would do what Mr. Kelly said it would do, which would be to leave the law in the state that it is under the present constitution and require that a defendant be informed of the nature of the charge against him. We want to try and make the record clear, however, that we would like to try and get away from the hypertechnical jurisprudence that exists at the present time and we would encourage, if that does any good, the legislature to look at this area. There are some changes that could be made in the Code of criminal procedure and in the statutes in general to insure, statutorily, better information to the defendant. Now, of course, the virtue of doing that by statute rather than by the constitution is, if something doesn't work, then you can come back and change it—you don't have to submit a constitutional amendment. But, basically, this amendment will leave the law in the condition that it is in at the present time and the legislature will be free to move from there to do what, in its wisdom, it deems appropriate. So I support the amendment and urge you to accept it.

Questions

Mr. Poynter You are not suggesting that it wouldn't be appropriate for this Constitutional Convention to charge the legislature with the responsibility of drafting criminal discovery statutes, are you?

Mr. Burson Not at all. In fact, Mr. Pugh, in our office we have started a procedure as of this year, in connection with the Twenty-seventh Judicial District Court, of criminal pre-trials wherein we have rather full discovery. I think that a lot could be done in the system of criminal justice in this direction, which would help everybody concerned.

Mr. Poynter The reason I asked is I was going to have an amendment providing for criminal discovery to submit to this constitution and he said a while ago that he believed the consensus was against it being in the constitution, and that surprised me.

Mr. Burson The only thing is, I think you would want to simply leave the terms and conditions of that to the legislature rather than trying to set them out in the constitution.

Mr. Poynter I would like to thank you, Mr. Burson.

Mr. Burson Yes.

Mr. Pugh Would you have in mind how the legislature might adopt the Jencks Act in 1921?

Mr. Burson I'm not familiar with it, Mr. Pugh.

Mr. Poynter The Jencks Act was the 1921 Act.

Mr. Burson I don't know what year it was.

Mr. Jenkins Mr. Burson, despite the fact that you said that you don't care for the prior jurisprudence or interpreting this language in the 1921 Constitution, if this amendment is adopted, the language will be exactly the same as the 1921 Constitution. Isn't that true?

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Mr. Burson The jurisprudence would remain the same, but this would still not preclude the legislature from statutorily going in and doing different things. I think clearly this could be done. It could be done either by amendment to the court [Code] of criminal procedure or just simply by another statute.

[Amendment reread and adopted without objection.]

Amendments

Mr. Poynter Amendment No. 1. (There are several cases of Derbes amendments on this section, and we have two amendments to them and add some language.)

Amendment No. 1. On page 4, line 12, after "Section 12," delete the remainder of the line and delete line 13. On line 14, at the beginning of the line, delete the words and punctuation "For his detention." [Amendment No. 2]. On page 4, line 12, after "Section 12," insert the following: "When a person has been detained for the commission of any offense, he shall be advised of the nature of that offense, his right to silence and against self-incrimination, his right to the assistance counsel and to court appointed counsel, if indigent."

Explanation

Mr. Derbes Ladies and gentlemen, I had a couple of amendments on this section, and all of them have been withdrawn except for this one. I've learned in the brief period of time that I've been at this convention that when there is a conflict between my heart and my head, it's a better practice to follow the head rather than the heart. I happen to believe that all people who are accused, and certainly anybody who is detained by virtue of the commission or alleged commission of an offense, should be afforded all of his Miranda warnings. But I think the committee's language is too general. It says that when a person has been detained, he shall be advised of his legal right. Now, I can tell you, as an attorney with a small amount of experience in criminal law, that the legal rights of an accused are many and various and go much further than the Miranda rights. It's not that a person should not be fully informed of his rights; it's just that the committee language, in my opinion, is so vague and general. To name a few rights that any defendant in any criminal proceeding has, he may have a right to a trial by jury, a right to an appeal, a right to be present in court when his trial is occurring, a right to a verdict rendered by a certain proportion of the jury, a right to bail, a right to all sorts of things...literally scores and scores of rights available to any defendant in any criminal proceeding. Now, the committee language, to my mind, sets forth this principle so generally that it could reasonably be construed by the court to mean that whenever any individual is detained for any reason by a law enforcement officer, he should be fully informed of all of his rights. That, to me, is not the intention, of my interpretation of the committee's intention, and that, to me, would create such an onerous burden on law enforcement and such a tremendous amount of difficulty that I frankly think it would be impractical. So I suggest as an alternative that this direct, explicit language be included in the Bill of Rights. Now, I realize what the committee is doing here. They are trying to establish a conduit, a conduit which is going to say that whenever a new right of the defendant is created, that the constitution of the State of Louisiana requires that that new right be explained to the defendant. Now I say that that's just too vague to be efficiently and practically operative. I further say to you that people who are detained within the purview of this particular committee proposal are not only people who are being detained for questioning at the outset of criminal proceedings, but people who are, in some cases, being detained upon conviction, people who are being detained for reasons of mental health.

Now, I don't quite know what their rights are. I don't know whether their rights have indeed become a matter of constitutional law, but to create the obligation on the part of the detainer for advising these people of their legal rights, without defining legal rights, is so vague and overbroad as to create, in my mind, a duty upon law enforcement which cannot easily, thoroughly, and efficiently be exercised. Thank you, and I urge the adoption of the amendment.

Questions

Mr. Lanier Mr. Derbes, you and I discussed a certain couple of matters concerning your amendment yesterday, and I also discussed it with some of the members of the Bill of Rights Committee with reference to their language and your language that says, "when a person has been detained." Is it not true that people can be detained by other than police officers?

Mr. Derbes Yes, they can.

Mr. Lanier For example, a private person can make an arrest for a felony pursuant to the provisions of Article 214 of the Code of Criminal Procedure. Is that correct?

Mr. Derbes That's correct.

Mr. Lanier Storekeepers and their authorized employees can make detentions of shoplifters under Article 215 of the Code of Criminal Procedure. Is that correct?

Mr. Derbes That's correct.

Mr. Lanier Now, would I be correct in saying that it is your intention, here, to make this amendment of law enforcement officers to give the warning and that it is not intended to advise the non-law enforcement people like private citizens and shopkeepers.

Mr. Derbes That's my intention, yes. I'd like to point out to the convention that where this comes up is when a defendant goes into court and says, "A statement taken from me cannot be properly used in furtherance of my conviction because I was not properly advised of my rights." Now, if the only term used in this constitution is "legal rights," a defendant could go into court and say that "a statement taken from me, even though I was advised of my right to counsel, my right against self-incrimination, my right to court appointed counsel, that that statement cannot be used against me because I was not advised of my right to trial by jury or my right to a jury verdict based on a certain proportion of the number of jurors, or I was not advised of my right to bail," or any of the scores and scores of legal rights provided by the Louisiana Code of Criminal Procedure. I'm trying to simplify this and do what I think the committee intended, but I don't think you can establish a conduit for all legal rights in this constitution without being overbroad and general and thereby jeopardizing the relationship of law enforcement to the individual defendant.

Mr. Jenkins I have a couple of questions, James. You said that this might apply to people after conviction or people detained in mental institutions. Isn't the title of this section "Rights of the Accused," and aren't all these sections on criminal justice in chronological order when we say "Rights of the Accused," in Section 12, "Initiation of Prosecution" next, "Grand Jury Proceeding" next, "Fair Trial" next, and "Trial by Jury", then "Right to Bail" and then "Punishments"? Aren't they all in chronological order, and doesn't this clearly apply to the rights of the accused?

Mr. Derbes Mr. Jenkins, it's not clear to me, frankly; no, it's not clear to me.

Mr. Jenkins When it says "Rights of the Accused"

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as the title of Section 12, it's not clear to you that you are talking about someone who has been accused rather than someone in a institution or after a conviction?

Mr. Derbes This section, like so many sections of this article, I think, is not drafted as clearly as it could be. Unfortunately, I don't derive and don't infer the same ready and clear definition of it that you do.

Mr. Jenkins Let me ask you this, also. You say you leave out the committee's language which said, "When a person has been detained, he shall be immediately advised." For one thing, "for the reason for his detention—he shall be immediately advised of the reason for his detention." Now, you haven't included that language in your amendment. Shouldn't people who are detained be told why they are being detained?

Mr. Derbes Yes, I think it is possible. The committee has not yet decided on that language.

Mr. Jenkins Yes, but that's the language that can be much later in the proceedings. We're saying when he's detained.

Mr. Derbes No, Mr. Jenkins, it says, "When a person has been detained for the commission of any offense, he shall be advised of the nature of that offense." Now, how do you argue with that?

Mr. Jenkins Well, of course, what the committee is talking about here is detention, and detention meaning something compulsory—you are being kept by the police. Couldn't you be detained simply to be a witness, and shouldn't you be told that you are being detained to be a witness?

Mr. Derbes I guess so, and maybe I've left out witnesses. But I think that the scope of your original provision is broader than the overbreadth in the way that it is going to affect the problems of aducing statements in court than whatever problem I may have overlooked in treating witnesses as a result of this amendment.

Mr. Gravel Mr. Derbes, I'm inclined to find it all to agree with you about the overbreadth of the language in the committee proposal but I do pose this question to you. Isn't it a fact that in your amendment that you have not provided for situations where persons have been lawfully arrested when it may not yet have been determined that a crime or an offense has actually been committed, and to that extent wouldn't you say that your amendment probably is lacking to some extent in providing for the rights that you would seek to provide for persons who are arrested or detained?

Mr. Derbes Let me try to narrow this issue, Mr. Gravel. Isn't it true that whenever anybody is arrested, he is arrested for the commission or alleged commission of an offense?

Mr. Gravel Not necessarily, he could be stopped on suspicion for investigation of the possibility that an offense has been committed. That's done, you know, by investigators many, many times.

Mr. Derbes Yes, but that's not the issue here. The issue is whether or not a person should be arrested.

Mr. Gravel Yes, but that's not the issue here.

Mr. Derbes Yes, but that's not the issue here.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, we rise in opposition to this amendment. Please keep in mind that when you talk about a person who is arrested for the commission of an offense, you are talking about a person who is not involved private conduct between two citizens at

any time. It involves the rights of a citizen against the state with respect to state action and that includes, of course, your sheriffs and everybody else in the state structure. First of all, just getting to the amendment right away, Mr. Derbes' amendment limits for all time the rights that an accused or an arrested person may be entitled to which the courts may say are limited as his proposal does. We use the language "legal rights". Everyone knows that when you're arrested you don't have to be given your rights about pleading guilty and waiving your right to a trial by jury and all those other matters. You merely have to be given your rights with respect to an arrest that you don't need to make a statement. Any statement you made may be held against you and those fundamental rights that most lawyers, unfortunately there are not all lawyers here, know what we're talking about, but in any event it allows the court in the year 2000 to look at this issue and to see whether there are other legal rights that we don't contemplate at this time. The due process laws of the United States Constitution says that "nobody shall be denied equal protection of the law". How broad can one make a statement by saying the equal protection of the law? That's not the issue here. The issue is gone by to things that were never considered by the people in 1869 when the due process laws were written into the constitution. All we are saying is we've got an intelligent, sane, Supreme Court of the State of Louisiana that is elected by the citizens of this state to interpret our constitution. Let's let them in the year 1989 and 1990 decide what legal rights an accused is entitled to and let's not freeze into the constitution something that may not be enough in the year 1990. That's all we're saying — I move the previous question at this time.

Questions

Mr. Fontenot Mr. Roy, I don't necessarily agree with Mr. Derbes' proposal either but I would like to ask you a question. If we don't adopt Mr. Derbes' proposal concerning this language "when a person has been detained", suppose you have a person, I mean...I'm talking about a committee proposal...he shall immediately be advised of his legal rights and the reason for his detention. You have certain situations where a juvenile or somebody might be shoplifting in a store and you don't have a police officer or anybody, are you going to require the owner of a corner grocery store or somebody to advise him of his constitutional rights? Doesn't this language require that?

Mr. Roy Mr. Fontenot, I just answered that. A Bill of Rights is a statement of rights of the people against the state and not against other citizens. A citizen does not have to inform you if he catches you robbing his house or burglarizing his home I don't have to start saying "I'm Mr. Fontenot" before I take you to the police station. I want to inform you of your rights. You're not the state. I am not engaged in state conduct activity and therefore, your rights are not violated when I catch you and don't inform you of anything.

Mr. Fontenot Well, why don't you say "state. You may be shall immediately be advised of your rights" who is going to be advising him. You're implying by leaving out words that it is going to be a police officer but I don't take it the same way you do.

Mr. Roy Because, Mr. Fontenot, it's my judgement that it's implicit in any constitutional law and Bill of Rights that you're dealing with rights against the state conduct and activity and not against individuals and if you don't understand that, I don't want to be nasty, but I'll never make you and you'll never make me believe that that's not what's meant.

Mr. Lanier Mr. Roy, one thing that concerns me

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about Mr. Derbes' amendment and the committee proposal is suppose a police officer, and of course the way this thing is drawn I would apply to, as I understand it, to even misdemeanor such as game violations, speeding tickets, and other types of things. Suppose a police officer or game warden or whoever he is...constable, did not advise the person of these rights. What would be the consequence? Would that mean the whole prosecution would be thrown out or would that mean that only any statements are given or any evidence seized pursuant to the detention would be quashed?

Mr. Roy Mr. Lanier, that's a valid question and I can only answer it this way. I can tell you what I feel would be...I think probably our court would follow present jurisprudential interpretation on that and that the evidence used that would be gotten without the benefit of the warning would be suppressed and I would hope that's the way it would go, but I can't say what the court would do in the year 2000 and maybe if there were great abuses of that, the court would take a different tact and say "you know, we're going to impose a little more restriction on this". I just don't know, all I know is that we can't write a statutory provision in the constitution.

Mr. Lanier Well, would you agree that under the present law a violation of a constitutional provision like this would not, would not be a grounds for a motion to quash the charge?

Mr. Roy Yes.

[Previous question ordered.]

Closing

Mr. Derbes Ladies and gentlemen, I'm merely trying to bring this thing within reason. What the committee is trying to do is to establish a conduit here for all legal rights and I'm really in favor of that but it's just to create an undue burden I think, so let's be specific in this particular part of the constitution or let's say nothing about it in the constitution. Now, you have a choice, you can leave it up to the United States Supreme Court and the courts of this state or you can be specific and say something about it in the constitution but if we do decide to say something about it in the constitution, let's be specific, otherwise I think we run a terrible risk here. Thank you.

[Division of the Question ordered. Amendment No. 1 read and rejected: 50-58. Motion to reconsider tabled. Amendment No. 2 read.]

Point of Information

Mr. Munson Mr. Chairman, do we not now have a situation that if this amendment passes we have two first sentences; one on top of the other one? We did not delete the first sentence, this puts it on the same line.

Mr. Henry No, not in my opinion, no. Mr. Clerk, explain why, in my opinion that's incorrect. You got me into this.

Mr. Poynter I don't think I can get you out either.

Mr. Henry In my many years of presiding, I have concluded that Mr. Poynter has finally been wrong and the amendment is not going to fit and the question is not divisible, and Mr. Poynter you're overruled.

Why do you rise, Mr. Derbes? You can't withdraw the amendment because the previous question has been ordered. Does that answer your question?

[Rules Suspended to allow withdrawal of Amendment No. 2.]

Further Discussion

Mr. Derbes Mr. Chairman, I would like to point out that Mr. Gravel has a better amendment than mine, and I move to withdraw mine.

Mr. Henry Well, I certainly hope so and I have decided again that Mr. Poynter was right and I was wrong because this amendment could have been done in the same way, and I will read it to you the way it could...just to prove that it wasn't as bad and that we were right in the first place, Mr. Stinson. You've just got a lot of repetitive language but it would read "when a person has been detained for the commission of any offense he shall be advised of the nature of that offense, his right to silence and against self-incrimination, his right to the assistance of counsel and to appointed counsel if indigent. When a person has been detained he shall immediately etc. etc., so it would work.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1, go the Jack amendment, page 4, between lines 19 and 20, in floor amendment No. 1, proposed by Delegate Avant and adopted by the convention on yesterday at the end of line 3, place a comma after the word "record" and add the following: "without cost to the state." I'm sorry, "without cost to him." Right.

Explanation

Mr. Jack Mr. Chairman and members, yesterday we passed the amendment of Mr. Avant that provided "no person shall be subjected to imprisonment or forfeiture of his rights of property without the right of judicial review based upon a complete record of all evidence upon which such judgment is based." This right may be intelligently waived. Before that amendment was taken up I read it like the others and I was in agreement except for one thing. I feel strongly and have always, when a person is tried...remember everybody that is tried is not guilty, plenty of people are innocent that he should get a full, fair, impartial trial and I don't think he should have to pay for his defense by having to pay for a record. Now, the Supreme Court in that Illinois case held that if you are indigent you are entitled to a record. There are many people that cannot afford the record but they don't fit what the term of the court would be as indigent so I have an amendment that simply provides that this record, regardless of who is being tried, is to be furnished where there is an appeal without any cost to the defendant. I think it's perfectly fair. It will be left up to the legislature as to how they work it out as to whether the parish pays for it or the state pays for it. Personally if I was in the legislature, I would say the state should be the one to pay, not the parish. When people are charged with a crime they're not all necessarily from the parish where the trial is. They may be a person...South Louisiana charged with a crime...North Louisiana...vice versa. It's a state problem and criminal cases...the law is, you only have an appeal on areas of law, you reserve Bills of Exception. You do get paid for taking what little evidence the court rules has a direct bearing on that Bill of Exception but that is a joke, an absolute joke because even though you have an error under a Bill of Exception unless there is prejudicial error the court can't reverse it. How in the world are you going to tell whether it's prejudicial error unless you have a complete record of what you're doing if you don't pass every reversal except a few that I don't know whether it was proper to reverse it or not. There was a lot of doubt because it wasn't the record. The court has to...when you go to reverse on an error of law, you've not to know what the whole case was about or else you're just taking a guess at it, and what you are doing if you don't pass my amendment, ladies and gentlemen, what you're doing, you're going to be saying "a person that's plumb

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indigent, no if's and's...he gets a free record, but if a court rules he's not indigent and they might rule one place one way and the other because it's going to be a question of fact whether that person is indigent. If it's ruled he's not, he is not in the position to pay...now these records...I know in Caddo cost a lot, they cost a dollar and over a page. That's a lot of money, depends on how much evidence. If it's a weeks trial you're looking at a bill between five and six hundred dollars and many a person has been hiring a lawyer, he may have been in jail without bond, they have no income in the family but yet still not an indigent in getting a free record. I'm just saying that if we're going to protect the rights of people that we're saying we are, let's don't say some people get a full opportunity to present their case all the way from the lower court with the jury to the Supreme Court and they get a record but other people do not get a record. If I ever heard of discrimination that would be. Now, I know you're going to hear for the amendment of Judge Dennis and I will take that up when it comes but it doesn't provide for this, it leaves it to the legislature. The legislature has never done it; I tried to get them to do it when I was there and they're not going to do it because the police jury is afraid they will have to pay for it, and certain people of the state, and certainly somebody's got to pay for it and the state should pay for it. So I just say "there it is"; if you believe in affording a person a complete fair trial, treat everybody the same, pass my amendment, if you don't believe in it go on and kill my amendment. Thank you.

Vice Chairman Alexander is the Chair

Mr. Weiss Delegate Jack, I'm a little concerned about this amendment but it is contingent upon a matter that has already been discussed by the committee and that is what do you consider an indigent case?

Mr. Jack I just went over that, doctor. The courts can be different...I don't know, they used to say...call them paupers though.

Mr. Weiss Are we discriminating if we...are we subsidizing crime in the indigent and not in those who can afford it with your amendment?

Mr. Jack I don't say you're subsidizing but I'm saying if you just...let's just take an example...if you're a person that's no good, won't work or anything, and I'm not low rating any particular people but if you don't do anything and you beat the heck out of your wife and you're a no good citizen...everything and you're broke, you can get the transcription; no if's or and's on it. But if you're a borderline, you work hard and you've got a certain number of children, then the court may rule you are not an indigent and you don't get the transcription. Let me tell you, you know until recently you could get electrocuted for a crime and yet you couldn't get a transcript of the evidence. You'd get life, twenty or thirty years but if you're broke or if you're an indigent, whatever that may mean that pleading hard to see, hard to find, here it is, there it goes, you're not indigent, you don't get that right.

Mr. Weiss Well, if we're going to provide free justice for all why should we just limit the free cost of jury trial to the indigent and why not provide it then for all people?

Mr. Jack Free cost of jury trial.

Mr. Weiss Well, free cost of proceedings of the

Mr. Jack You don't have to pay for the jury in a criminal case. If you lose in a civil case you do.

Mr. Jack, considering the cost of a

this, your's even though a man is convicted...his conviction is upheld, he still wouldn't have to pay it. Don't you think maybe you could work it over and say "if he is acquitted and is innocent he would not have to but otherwise would". I think there's a distinction there, an innocent person shouldn't have to pay all of that but if he is convicted and guilty, well, I just don't think the state can pay all that expense.

Mr. Jack Mr. Stinson, I'm going with it this way. It's not personal to me; if you ladies and gentlemen want to draw a distinction between different cases and whether they get a fair trial or not, that's all right. I think the fairest way, you may have the amendment. That just further shows how much it is. A man could get, before they electrocuted him, could get electrocuted, a man could innocent, pay for his transcript, and his children couldn't even get his money back for what he paid for the transcript after the fact.

Mr. Smith Mr. Jack, won't this police jury have to pay all this cost? Won't it be considerable?

Mr. Jack No, I didn't leave it at that. I stated earlier, Mr. Smith. It will be up to the legislature on this thing, and I think the fairest way, as I said, and if I was in the legislature still, I said I would say the state should pay it because I repeat, you have crime committed in the various alleged crimes committed or people asked whether they are innocent or guilty that's all.

Mr. Jack I agree with you, but I don't think the state should pay for it.

Mr. Jack I agree with you, but I don't think the state should pay for it. ...nobody pays. I think the state should pay for it, something about it, I think the state should pay for it, wouldn't do it with that.

Further Discussion

Mr. A. Landry Mr. Chairman, I rise in opposition to this amendment. Under the present Louisiana law, any person who is an indigent can secure a free transcript and there is no reason to put this in the constitution wherein every person would be granted the right of a free transcript at the cost of the taxpayers when he might be a millionaire. I feel that that would be discriminating and it would hurt those indigents because the parishes and the state would have to pay for all of these transcripts and I could tell you this, that as a clerk that everytime a person who is in Angola applies for a writ of habeas corpus, we furnish him free of charge, not only a copy of the indictment but all of the proceedings, and therefore there is no need for this in the constitution. It would place a terrific tax burden on the people of the State of Louisiana and it would exempt those who could pay from paying for the transcript and I urge you to reject the amendment.

Further Discussion

Mr. Chairman and fellow delegates, I rise in opposition to this amendment. I am not talking about something that is going to cost someone a tremendous amount of money. I can see right now where the people, if we write this language in the constitution, are going to be at the legislature the next session and tell us to give every little court in this land, J. P. court or what other court you might be speaking of, money to provide a court reporter and if that is done someone is going to have to pick up the bill. I don't know whether it will be the guilty person or the innocent person. This matter has been before the legislature on many occasions and you are now speaking of a matter that is rather costly. When you talk about it is a municipal court in this state and all other courts that do not have to do

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that according to law at this time. I just wanted to call that to your attention. I think that if a person wants a transcript, they can get it under the present procedure but if you put it in the constitution you are going to create a tremendous amount of added expense to the taxpayers of the state and I just wanted to call that to your attention.

[The speaker is referring to the fact that the transcript is not a part of the record.]

Closing

Mr. Jack: Mr. Chairman and delegates, your attention just a minute. I want to answer one question. I was as well as I'm sitting here when I introduced that amendment, who would come up and speak but my good friend "Barry" Rayburn, well...we had the same thing in the Legislature except in the Legislature it was always the police jury, as I recall, would be the one having to pay for it. That's why in this one, I've left up to the Legislature whether the state would pay for it or the police jury, that's the only two because the defendant is not to. This is just a fair bill to treat everybody fair and just and it belongs in this Bill of Rights thing. I've sat here ever since we came back this week hearing about giving people fair trials. Every race, color, creed, man, woman, child, everything, be fair to them, give them the same trial; the same justice, everything. Now, here is an opportunity to put your hand on the green button and do what you say you want to do. I've heard more talk about being fair under this Bill of Rights; protect everybody. Now, I thought for all those years in the Legislature, a person was not protected in a criminal case and I fool with criminal cases aplenty. If you've got the money to pay for the transcript, no ifs or and's, pay a dollar or more a page, you get it. If you are poor, and there's no doubt about you can't then you still get it. I'm talking about the mass of people in between, they don't get it so that is some kind of unusual justice; some have a record to appeal on; some don't have a record to appeal on; just like good government costs money. All things that are done proper, looks like this day and time cost money. You raise your children properly it costs you money...you want to raise them and let them run wild like a ragamuffin and juvenile courts get them and everything, it'll be the cheapest thing you do and you won't be raising them. So I say let the legislature be forced by this amendment to pass on it and somebody pay for it and I say the state ought to. Thank you.

Questions

Mr. Singletary: Mr. Jack, this is a friendly question. Isn't it true that in the original trial in a criminal proceeding that there is no charge to the defendant? It does not cost him anything, is that correct, except if he can afford to pay for his attorney, he has to pay...

Mr. Jack: No. In the criminal case, now we are not talking about the de novo, little city court, we are talking about where the appeal goes to the Supreme Court, where the fines over, I think, five hundred, or could be over that, and the punishment over six months. It goes up on bills of exception, an old, out moded thing. Now on a bill of exception, the only thing you can get taken at the expense of the state and, or parish, is what little evidence the court says is directly connected with that particular objection. Consequently, you don't have a record where it has all the evidence, then the Supreme Court says even though its an error shown by a bill of exception, unless it's a prejudicial error, you don't get a reversal. Prejudicial means that if the error hadn't happened, you might have been acquitted instead of convicted. Now, how many of you hell whether this error was prejudicial without having the whole record?

Mr. Singletary: Well, I agree, I agree with you, Mr. Jack.

What I'm saying is, that except if a man can pay for his attorney, if he's charged with a crime, proceeding, his trial doesn't cost him. Is that correct?

Mr. Jack: Oh, you mean...are you talking about an indigent?

Mr. Singletary: Yes, sir, I'm talking about....

Mr. Jack: All right, you'd say a man's got money?

Mr. Singletary: Yes, sir.

Mr. Jack: All right....

Mr. Singletary: If a man is an indigent or if he can afford to pay, the trial....

Mr. Jack: Now, that's right, if he's indigent or he's got money, he can get this record because if he can afford to pay it....

Mr. Singletary: I'm talking about the original trial.

Mr. Jack: Well, that's what we are talking about.

Mr. Singletary: All right.

Mr. Jack: But you don't get that record free.

Mr. Singletary: But if he appeals, it costs him a considerable amount. Is that right?

Mr. Jack: It certainly does cost.

Mr. Singletary: Is that fair?

Mr. Jack: It's terribly unfair, I think, to make anybody pay for these records of taking the testimony.

Mr. Singletary: Isn't this a chance to correct an inequity in the law?

Mr. Jack: It certainly is. A man...there's been people electrocuted that didn't have a record, and that's horrible.

Mr. J. Jackson: Mr. Jack, as you know, we're talking about this cost factor again. But is it not true that when you look throughout the state, that we are spending millions of dollars on highways, we've recently got...the legislature will probably have to deal with an increase in the cost of Superdome in New Orleans, we just spend millions of monies for capital improvement. We're talking about a recording that would allow for a better implementation of the criminal justice system, then we ought to weigh this cost in perspective, and we ought to look at it in terms of some of the other kinds of costs that we put into, not only nonjustice, but nonhuman needs.

Mr. Jack: You are correct. There's your life, liberty, is the most important...and your health, too...those are the most important things you've got. If you lose those, you are gone. Now, I want to further answer this, Mr. Stinson, even a man that gets convicted, not the innocent, but he got convicted, that record later could show mitigation for a pardon board and that's another reason everybody should have it....

Mr. Alexander: Your time is up, Delegate Jack. Thank you.

[Amendment reread. Record vote ordered. Amendment rejected: 29-79. Motion to reconsider tabled.]

Amendment

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4, between lines 19 and 20, delete Floor Amendment No. 1, proposed by Delegate Avant and adopted by the convention on September 6, 1973, and insert in lieu, thereof, the following:

"No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a written or sound recording of all evidence upon which such judgment is based. The cost of the transcription of such sound recording shall be paid as provided by law.

This right may be intelligently waived."

Explanation

Mr. Dennis Mr. Acting Chairman and fellow delegates, this amendment is a clarification of what I believe is the intention of convention, and the intention of Mr. Avant and Mr. Kelly and others who sponsored the original amendment.

Mr. Jack's amendment has just been rejected. However, unless we adopt this amendment, I think that the present Avant amendment, the present language, could be interpreted to require the same thing that Mr. Jack had asked the convention to spell out more clearly. The Avant amendment says that "no person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a record of all evidence upon which such judgment is based."

As I read that, that could easily be interpreted to mean that you have a right to a complete record on appeal in every case whether or not you are indigent, no matter what the circumstances. I am attempting to clarify and do what Mr. Avant and Mr. Kelly, I believe, wanted to do which was to simply make sure that a recording is made of all of the testimony and then leave it up to the legislature as to who would get that transcribed free, at the cost to the state, or who would have to pay for it himself. This makes it clear that a mayor's court can satisfy the requirements of the constitution by taping with a cassette recorder in an inexpensive manner the proceedings. It makes it clear that the legislature could require, as it does now, that indigents be provided a free transcription of such a record. It makes it clear that the legislature could refuse to provide a free record to someone who could afford it.

I see Mr. Avant is going to ask me a question. However, I'd like to say I discussed this amendment with him yesterday and it's my understanding that he has no objection to the spelling out of the cost being paid as provided by law. And it is my intention not to interfere with the basic concept, but to make it clear that the legislature may decide who pays for the cost of transcription which is where the big cost is involved in preparing a record for an appeal.

Questions

Mr. Goldman Judge Dennis, is it required by law when on review for the record, that the record be typed out. When you say "transcription," you mean typed out by a stenographer? Or can that record be provided on a tape so that the judges, how many they are in the review, can listen to the tapes?

Mr. Dennis No, it is required that the part that is being considered in connection with the objection in the criminal proceeding be typed up.

Mr. Goldman Well, could the judiciary change that requirement to provide for the use of tape recordings to listen to the proceedings instead of typed out? If they could, the cost could be reduced tremendously because you can make five or ten dubs of a tape for about ten....less than ten dollars, four or five dollars.

Mr. Dennis Yes, sir, I believe that could be changed legislatively now, and I believe under this amendment it could still be provided by.

Mr. Goldman Reason I brought it up, there...

Mr. Dennis Yes, sir.

Mr. Lanier O. K. Thank you, Mr. Chairman.

Judge Dennis, the way this is written it could say that no person shall be subjected to forfeiture of his property without right of judicial review, etc.

Is this intended to apply in the cases of bail bond forfeitures which could either be surety or cash bail bond forfeitures?

Mr. Dennis Mr. Lanier, that is the, I have not added that language. That language was in Mr. Avant's amendment, and I am not attempting to change the basic concept that Mr. Avant's amendment set forth, and I do not wish to get into the merits of his amendment because it has been debated and adopted. All I am trying to do is to clarify that the legislature may provide a free transcript to indigents, but may refuse to provide a free transcript to those who can afford to pay for it themselves. That's all I'm trying to do.

Mr. Lanier Well, Judge Dennis, don't you think we should know what kind of transcripts we are going to be paying for, if it's going to be a transcript of a bail bond forfeiture, or another question would be, would it also apply in the case of a guilty plea?

Mr. Dennis My own viewpoint is that this would apply. You could satisfy this in a guilty plea or a bail bond forfeiture by simply providing the minutes of the court. But there is testimony taken in a proceeding, and if it is necessary in order for the higher court to review the case, then that would have to be transcribed.

Mr. Lanier So, the only way you could be safe on a bond forfeiture would be to transcribe it, because, I believe, you have up to six months to contest a bond forfeiture, don't you?

Mr. Dennis No, I don't think you need any testimony transcribed on a bond forfeiture. I think

Mr. Avant Judge Dennis, in my discussion with you yesterday, I understood that you were simply inserting the words, "a written or sound recording," and, of course, the provision that the cost of the transcription of the sound recording shall be paid as provided by law, and I told you that I had no objection to that, because I thought that was what you were doing. But in checking the amendment more closely, and I don't think, and I'm not implying that this is any intentional thing on your part, you have deleted the words, "complete record of all evidence," and you say, "a sound recording of all evidence."

Now, to me that is a different thing, two entirely different things, a complete record of all evidence, and a sound recording of all evidence, and I wondered what reason did you have for making that change in the language?

Mr. Dennis Mr. Avant, I did not intend to make that change.

Mr. Avant Well, would you....

Mr. Dennis I think this is an oversight on my part. It should read, "upon a complete written or sound recording of all evidence,"....

Mr. Avant Well, would you make a technical amendment, then, to this amendment to make it read, "a complete record of all evidence" to make it a "sound...."

Mr. Dennis Yes, sir, I would be happy to do so if the convention would allow me to withdraw it

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Figure 4

[Quorum Call: 99 delegates present
 and a quorum with the Office
 of the Secretary of the Board of
 the American Journal 446]

Appendment

Mr. Poynter. Amendment No. 1 [to Mr. Poynter's], has been substantially redrafted just to amend the prior amendment.

On page 4, between lines 19 and 20, in Floor Amendment No. 1, proposed by Delegate Avant and adopted by the convention on September 6, 1973, on line 4, at the end of the line, add the following:

"the cost of the transcription of such record, shall be as provided by law.

Simply adds the sentence, "the cost of the transcription of such record shall be paid as provided by law."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, after Mr. Avant pointed out the problem that he did, we agreed to change the amendment to make certain that it does not do violence to the concept originally set forth in Mr. Avant's amendment.

My amendment now simply says that the cost of transcription of the record shall be paid as provided by law. This would allow the legislature the freedom to require that persons who are not indigent, persons who can afford to pay for transcription of the record, would have to pay for it themselves. But, under the present law, as you know, the legislature has already provided that indigents shall be provided a free record. This would not disturb that rule of law.

Questions

Mr. De Blieux Judge Dennis, under the Avant amendment as we presently have it, wouldn't the legislature have to provide that, anyway? Isn't this....words that you want to add to it just merely surplus verbiage in the constitution? The legislature would have to do that, anyway, under that amendment.

Mr. Dennis Mr. De Blieux....Senator, I would not have offered the amendment had I thought it was surplusage. I think it's extremely necessary, and I want to clarify the intention of the convention.

I think that the...Mr. Avant's amendment as it presently stands could be interpreted either way, and I am making certain that it's interpreted one way, and that is, that the legislature may provide who pays for the cost of the rec...of transcribing the testimony.

Mr. DeLoach: Well, I don't want you to get... get you to think about this amendment a little while because I feel like it's just additional words that are not needed in the constitution. I just ask you to do that because that's what I think.

Mr. Dennis: Senator De Blieux, we considered this problem, this issue, for at least twenty hours in the Judiciary Committee. I have thought about it a whole lot, and I do feel that this amendment is necessary in order to clarify the intention of the convention.

Mr. Stinson Jim, I'm concerned about the sound recordings. Now, I believe you answered a prior question there that the legislature would tell the Supreme Court to revise your rules and accept a cassette, or any other type of recording device. If, under the present rules, they wouldn't accept it, would they?

Mr. Dennis I'm not sure I understand your question.

Mr. Stinson You say a written or recorded recording. A sounding recording is a tape recorder.

Mr. Dennis Mr. Stinson, I apologize for the confusion, but I have withdrawn that amendment and the one I have now does not say anything about recording.

Mr. Stinson I'm sorry. Thank you.

Mr. Pugh I wanted to ~~read~~ ~~it~~ ~~up~~ ~~of~~ ~~the~~ ~~amendment~~
or have somebody read it, or ~~something~~

Mr. Dennis Well, I can read you what it is if...

Mr. Pugh I want to see it.

Let me ask you one question, if I may.
You say the cost of the transcription of such
sound recordings.

Mr. Dennis No, sir. I apologize again for the confusion. I have withdrawn that amendment. The amendment I am offering now simply says "the cost of the transcription of such record shall be paid as provided by law."

Mr. Pugh Well, now, wouldn't that preclude the use of video tapes because you wouldn't transcribe a video tape, and that obviously is the coming thing in reproduction of evidence in cases.

Mr. Dennis: I don't think so, Mr. Pugh, I think "transcription" would cover a reproduction of a reproduction of a video tape.

Mr. Duval Judge Dennis, is it...I realize part of this goes to the Avant amendment which you are, in essence replacing here, but is the thrust of these words to do away with trials de novo?

Mr. Dennis No, sir.

Mr. Duval In other words, you are still going to have your....it's your intent to still have the right to trial de novo. If it's not, what's the use of having a transcript if you have a trial de novo is what I'm getting at.

Mr. Dennis Well, as Mr. Avant pointed out when he sponsored his amendment, the Judiciary article we have adopted does allow for us to get away from trial de novos. It doesn't require it. But if we do get away from trial de novos, Mr. Avant wants to make sure that everyone has an effective appeal, everyone who is endangered of being incarcerated has an effective appeal, and of course, you don't have an effective appeal without a record.

Mr. Duval. So this would primarily come into play, then, in the event the legislature does away with trials de novo.

Mr. Dennis In other words, to clarify...the judiciary article would allow the legislature to go either way, trial de novo or not. If they don't, Mr. Avant is saying, "You've got to prove the man a record."

I'm coming along and I'm saying, "The state is the only who pays for the record...the transcription of the testimony." That's what's happening.

Mr. Duval All right.

Point of Informatic:

Mr. Avant: Mr. Chairman, I didn't have a question. I had a point of order. All I wanted to do was make a request, since there appeared to be some confusion in the minds of certain persons, certain members, that the amendment, the amendment, or my amendment, it would read if Judge Dennis' amendment was put on it so that everybody can listen and then everybody can understand. Because the business about the sound recording and all that has been taken out, and you just read the way it will read. Judge Dennis' amendment is adopted, I would appreciate it.

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Mr. Alexander Just one....

The delegate requests that the Clerk will read the amendment if adopted, as it would read. That is the Avant amendment plus the Dennis amendment. The Clerk will make that correction....one moment, please.

Mr. Poynter Delegate Avant and read as follows, your amendment begins first sentence, "No person shall be subjected to imprisonment or forfeiture of his rights or property without the right of judicial review based upon a complete record of all evidence upon which such judgment is based."

Add the sentence, "The cost of the transcription of such record shall be paid as provided by law. This right may be intelligently waived."

Questions

Mr. Perez Judge Dennis, isn't it true that if this amendment is not adopted, the legislature would have the authority to do what is provided in your proposed amendment?

Mr. Dennis, would you restate the question? I'm not sure I understand.

Mr. Perez Isn't it true that even if this amendment is not adopted, that the legislature would have the authority to do what is provided in your amendment, that is, provide for who shall pay for the cost of of transcription?

Mr. Dennis As I said, earlier, Mr. Perez, I think it could be interpreted either way. I think it's ambiguous as it stands. For that reason, I am offering the amendment. Otherwise, I would not offer the amendment. I would not take up the time of the convention.

Mr. Perez Well, could you tell me how effectively we can mandamus or force the legislature to adopt this law?

Mr. Dennis Well, Mr. Perez, as it stands, I think this is a man took an appeal and the state didn't provide him a written record, the Supreme Court might interpret it to say that he had to be released from imprisonment.

Mr. Perez Well, in the absence of the legislature passing a law, even with your amendment, isn't the same danger there?

Mr. Dennis No, sir, I don't think the Supreme Court could interpret it the way I just stated with my amendment. With my amendment here, the Supreme Court can readily see that it was the intention of the convention that the legislature be allowed to say to someone who can afford a record, "No, we are not going to transcribe the record for you."

And when he takes an appeal, then he's not entitled to be released from imprisonment simply because he doesn't have a record.

Mr. Perez My question is, until, unless the legislature does provide, what position, then would the defendant have or the convicted person on appeal?

Mr. Dennis Well, Mr. Perez, the legislature has already provided that an indigent is entitled to a free record, and those who are not indigent are not.

Mr. Champagne The only question I had is your amendment, is designed to insure that not necessarily the state has to pay for all these transcriptions, is that correct?

Mr. Dennis You're right, Mr. Champagne.

Further Discussion

Mr. Jack Mr. Chairman and members, this is entire-ly, without prejudice, I'm adding this amendment

ment. The Avant amendment that we passed, the only reason I voted for it was I had instructed Mr. Glassell that draws the amendments to right to my amendment without cost to the person that's the defendant, provided Avant's passed. Without my amendment, which was defeated, the Avant amendment is purely window-dressing.

The legislature, to my knowledge, back since 1940 when I became a member of the House of Representatives, has always had, still has the right to pass the law about this transcript and to say who pays for it. I saw twenty-four years and ever since they are not going to pay for it except where they are made to do it. We passed other things in this constitution that say what the law is. That's self-operated. You can't mandamus the legislature. You pass all the constitutional amendments say for them to do it, they won't do it, maybe. They were all here.

But if you had passed that little simple amendment, without cost to the defendant, then they would do it for the simple reason if a man took an appeal and you didn't provide him with a transcript, he'd get a new trial. The legislature got to put money before complete justices of allowing everybody to have the same kind of trial.

If you pass the Dennis amendment, you are putting window-dressing in the constitution that don't mean a continental. And it's not fair to people, and remember, when we are talking about trials, there have been many a person that's innocent that's been tried and more now days, percentage wise, than they used to.

Now, if you were tried, just think how you would hate if you....the judge said you are not indigent, but you couldn't pay for it. All right, you wouldn't get the transcript. Some fellow that clearly had nothing, he would get it. You've got to pay yard sticks of justice. Now, let's just be frank and don't put this window-dressing in here.

Now Judge Dennis, or someone discovered, maybe under the Avant amendment, there was a slippup and that anybody could get a transcript under it. I would rather leave that there, the possibility, than to have this one that the legislature would have it up, under the Dennis amendment, to the legislature who you know good and well is not going to order the state to pay for it or the police juries. So that is pure window-dressing, pure, simply, unconditionally, and I just don't believe in trying to fool people if something's not true, don't say it is, and let's just decide this thing. And I hope somebody smarter than I am, and there are plenty of you are, that can switch language around if we defeat the Dennis amendment, so that we can get another floor amendment in and leave it up to the state to pay for it.

Further Discussion

Mr. De Bileux Mr. Chairman and ladies and gentlemen, I'm going to be very brief because Mr. Jack made my talk for me except he didn't say it in the manner in which I would have said it.

The only thing I can say is, this amendment is entirely unnecessary. The legislature would have to implement the Avant amendment anyway, and they can't do it without legislation, and so therefore, this language is entirely unnecessary. It's additional verbiage which we don't need in the constitution. If we are going to shorten the constitution, let's don't put words in it that mean nothing, and these words would mean nothing insofar as that is concerned.

I ask you to vote against the amendment.

Closing

Mr. Dennis Mr. Chairman and fellow delegates, this amendment simply clarifies what I believe was the intention of Mr. Avant and the convention earlier. Mr. Avant has agreed to it. Mr. Stinson has told me that the Bill of Rights Committee does not have any objection to it.

The only reason you'd vote against it would be

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to leave the section ambiguous. I submit to you that those who are against it are hoping that it would be interpreted to require the state to provide everyone a free record.

I'm simply making it clear that the legislature can say, "No, if you can afford a record, you have to pay for it, but those who can't afford it, the state will pay for it."

So I ask for you to adopt the amendment.

Chairman Henry in the Chair

[Amendment tabled.]
to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Velazquez, et al.], on page 4, at the end of line 19, add the following: "the legislature shall provide for a uniform system for securing counsel for indigents including qualifications and compensation." I would appreciate that this language would go in front of the language of the Avant amendment and that it was inserted between lines 19 and 20, and the instruction says at the end of line 19. So this would be at the end of line 19 and before the Avant language as now amended by the Dennis amendment.

Explanation

Mr. Velazquez Mr. Chairman, fellow delegates, basic to the American concept of justice is the concept of a fair and an adequate defense. The most glaring problems in this field occur in the situation where the defendant is indigent. The purpose of this amendment is to help all those segments of society in the greatest need of help. I don't believe anyone at this convention wants any citizen to be railroaded to Angola because that citizen happens to be poor. The need for adequate counsel should extend beyond an unwilling attorney, drafted by an overworked judge. None of us would want to stand before the bar of justice accused of a crime and defended by a lawyer who didn't want to be there, who wanted to be somewhere else making some money. This is not an attempt to suppress or supplant Section 12; it's rather a supplement. It puts the exact mechanism in the hands of the legislature where it belongs. It only mandates the legislature to provide for a uniform system. This uniform system could be a mixed system. It could be a combination of the old and the new. It could be a completely old system. It could be a completely new system. The key word is "uniform." This is a bill to help poor citizens who have been accused of crime. If the poorest citizen of this state can't receive justice, then no citizen is safe. I urge your consideration and your support for this amendment.

Questions

Mr. Lanier Delegate Velazquez, you and I discussed this matter previously, but to make sure the record has what your intention is, I'd like to ask you a couple of questions. As I understand your amendment, it is not intended to require either the public defender system or the indigent defense system, but would authorize both systems to exist simultaneously in different parishes provided there was an overall uniform system for the state. Is that correct?

Mr. Velazquez That is exactly correct, Mr. Lanier. It puts it in the hands of the legislature to set a uniform system either including some of the old, some of the new, or whatever they feel the system should be.

Mr. Lanier In other words, in Lafourche Parish if we wanted to have the indigent defense system we could have that, and in New Orleans if they wanted the public defender system they could have that providing there was uniform legislation establishing

both systems.

Mr. Velazquez That is exactly correct.

Mr. Stinson I believe your answer to the question was that a uniform system would permit a mixed system. When you say the legislature shall enact a uniform system, doesn't that mean that they are one and the same for every parish and every district?

Mr. Velazquez Mr. Stinson, you can say it's like cream, fudge ripple, and chocolate ripple. It would still be a uniform ice cream law.

Mr. Stinson But it's not a uniform ruler ice cream law.

Mr. Velazquez I'm not passing a uniform color law. I'm trying to leave color out of this, Mr. Stinson.

Mr. Stinson But I'm afraid though that when you have it, it's not going to be what we want by your amendment.

Mr. Velazquez I feel it will be, Mr. Stinson.

Mr. Jenkins Mr. Velazquez, if this is going to allow Indigent Defender Boards to exist in some parishes and then in other parishes you'll have a Public Defender System, why are you even proposing this thing? I don't understand. What's the meaning of "uniform system" if it's not to put all parishes under the same sort of system?

Mr. Velazquez In the first place, you are trying to put words in my mouth. I'm trying to set-up a "uniform system." "Uniform system" doesn't mean everybody's got to wear a green uniform and wear a clown hat. Nor does it mean that everybody has to do everything exactly the same. It provides for a "uniform system." Uniform in that justice is given to indigents. This is the basis of the uniformity, and the method is left to the legislature of which you are a member; and I'm sure that if you want that particular system, then you go to the legislature and you stress it.

Mr. Jenkins Then what is the purpose of the amendment? What does it accomplish that we don't already have?

Mr. Velazquez As important as the letter of the law, is the spirit of the law. Indigents and the concept of indigent defense deserves constitutional treatment.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I rise in support of the basic concept set forth in Mr. Velazquez's amendment. Let me tell you right now how the system of justice for indigents works. In various parishes we have what's called an Indigent Defenders Board, and just a few lawyers get on this board, a lot of whom have never practiced criminal law. They don't know anything about it. They get an appointment for some indigent who's been in jail maybe two or three months. They are very busy with their practice. They get distracted, and they somehow forget this fellow is up there in jail, and they go see him every now and then and ask him how he's doing. But I can tell you, I've seen people stay up in the parish jail for a year or longer because his lawyer was appointed and then finally withdrew because he felt like he wasn't doing a good job. Then they tried to appoint another one, and there was no lawyer available. Then the court had to appoint a lawyer not under the indigent defender panel, and it's a very unworkable system, and it's very unfair to people who get attorneys appointed who really don't care or really aren't able to handle the job properly. I think what we really need in Louisiana is a public defenders system.

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There is one way that will be a lot better than to have a long time, we'll get people who are specialists in the field and won't have the disadvantage of the state having the expertise and the defendant not having it. I think it's ... that this is the basic thrust of Mr. Velazquez's amendment, and I think that this convention should go on record mandating the legislature to establish some type of uniform system with the hope that we will ultimately end up with a public defender system for indigent persons accused of crime. This is the only way they will be fairly represented although many lawyers conscientiously attempt to represent indigents when they are appointed if they are on the indigent defenders panel. A lawyer does not do proper justice to his client under those circumstances. I urge you to adopt this amendment with a basic mandate to mandate the legislature to establish a public defender law.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I rise in support of this amendment. I am the former chairman of the Indigent Defendant Board in St. Landry parish, when this system that we're operating under now was first started. I echo Mr. Duval's sentiments in that I find that a great many lawyers are reluctant to undertake the defense particularly of serious crimes, not so much because they are not willing to undertake to perform their duty as a member of the bar, but simply because they are somewhat fearful of their lack of knowledge in the field of criminal law. I support Mr. Velazquez's notion however that what we need is not necessarily a pure public defender system, although I will frankly state that I think every parish in this state ought to have a public defender, but I think that it would be good to retain a mixed system for this reason. It seems to me that it would help the overall understanding of the legal profession of the system of criminal justice and engender the kind of understanding that makes for a better system of criminal justice, if we continue to allow, and indeed require in some cases, members of the bar at large to have contact with the problem of criminal defense. I think that by and large my experience has been that some of the best jobs of defending indigent criminals that I have seen done were done by people who were not criminal lawyers, but they were good lawyers and when they got appointed, they took their appointment seriously, and they did an outstanding job. I had the responsibility by appointment, myself, of defending someone in a capital trial for murder. It lasted nineteen days, and I think it's still probably the longest trial that was ever held in St. Landry parish. My cocounsel in that case were two lawyers who were not specialists in criminal law, in any sense of the word, and they did an outstanding job. So I think that it seems to me that it's to pin ourselves to either system. Let's do what Mr. Velazquez says we can do under his language, and I agree with him. Let's opt for a combination. However, I think that the requirement that we have a uniform system would require some type of public defender in each parish, and I am for that because I will frankly state that of all the rights that you can give criminal defendants, none of them mean a thing without the right to counsel. In my own personal opinion the Gideon v. Wainwright decision which gave criminal defendants in felony cases the right to counsel, absolutely was the most important landmark in establishing the rights of the accused in our constitutional law. I urge your support of this amendment.

Questions

Mr. Jenkins Mr. Chairman, these are the questions that Mr. Velazquez has asked. Will we require a public defender to be appointed for each parish. Is that correct? Is that what you said?

Mr. Burson The language says, "that, if

don't want to read into it anything that it doesn't say. It says "a uniform system." I'm saying though, Woody, that my own personal opinion is that each parish ought to have a public defender.

Mr. Jenkins Well, if a uniform system would permit some parishes to have public defenders and others to have boards, what does the amendment say about that?

Mr. Burson I think that if you mandate the legislature as you do in this language to create a uniform system, I have enough confidence in the legislature that through the legislative process they will work out a uniform system that will meet the needs that exist.

Mr. Jenkins But under the section without this amendment the legislature has all the authority it needs to do the same thing, doesn't it?

Mr. Burson Well, I'm not real sure that they are mandated to do this under the ... In fact, I'm sure that they are not mandated to do it under the present constitution, and I think that it is appropriate that we would include such a provision in the new constitution. I might point out that the legislature has made significant strides in this area. When I first started practicing law, when you got appointed to defend a criminal case, you didn't get paid for it. I participated in a week-long defense in a murder case for nothing, but the legislature then set up the Indigent Defendant Board and the Criminal Defense Fund ...

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I am coauthor of this amendment although on the copy my name somehow or another happened not to be here. The first thing I want to mention to clarify it, in the use of the words "for uniform system," that doesn't mean that every parish or every judicial district, if you said it that way, would be the same. You know you can go by, for instance, you could provide for cities or districts over a certain population, for instance would provide a public defender system. You could provide if the legislature thought so. Another one might have some type of indigent defense group, or the lesser ones a system that's in vogue now where individual attorneys are appointed. It might decide who would pay them and how they would be paid. But the fact that it says "for uniform system" does not mean that the poor parishes would have to support the public defender system. It might ... under this ... would legislature ... if they want it, it could make the state pay for the whole thing. They would be the ones to decide all that. Now, I have seen actual cases too many times for this thing to happen again, not exactly on a bigamy, but I'm just going to show you examples. It's not enough where you can afford it to have a public defender system or a proper Indigent Defense Board to merely have so many cases where a lawyer is appointed, and he just confers with the defendant. They do not explore every possibility of guilt even though the person says they were guilty. Now, here's an interesting case. This is the attorney for this lady, but I handle Pardon Board and parole cases. She wrote me, would I see her at Angola? She told me in the letter the facts. Now, here were the facts, and I immediately got in touch with people in east Texas and found it to be the truth. Now this lady, what she had done, being married, she was enamored of a man who she was still married in, in her opinion, and she'd seen her husband from whom she was separated over in east Texas just the day before she got married. She went on anyway and she told him she was going to get married. She got married. Now, somebody turned her in. She pled guilty; it was not in Caddo, in another parish. She pled guilty to bigamy, was still married. A friend over there in Texas discovered after getting back from a vacation, reading about this lady going up for bigamy, wrote her, and lo and behold, it turned out, she was married, she was still married.

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time for bigamy got married, three hours before she got married, unbeknownst to her, her husband was killed in an auto accident over there in east Texas. She intended to be a bigamist because she loved that man so, and he wanted to marry her, but actually she wasn't guilty of bigamy because he had been killed in a wreck. Now you can say that lawyer, I know, must have felt bad afterwards because he didn't check out. Because you cannot be guilty of bigamy if your spouse was dead even a second before the marriage ceremony that would have made you a bigamist, I'm saying all people should have adequate counsel. The small parishes are unduly burdened trying to make those lawyers take care of all of that. This is a good bill that Mr. Velazquez has here and I think I've explained about the question of "uniform." Now, if anybody doesn't understand it, I'll try to answer any questions if I have any time.

[Previous question ordered. Record vote ordered. Amendment adopted: 99-11. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendment No. 1 [By Mr. Derbes], on page 4, line 12, after Section 12 delete the remainder of the line, delete lines 13, and 14 at the beginning of the line, delete the word and punctuation "for his detention."
Amendment No. 2, on page 4, line 12, after "Section 12" insert the following: "When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to silence, his right against self-incrimination, his right to the assistance of counsel, and to court-appointed counsel, if indigent."

Explanation

Mr. Derbes Ladies and gentlemen, this hopefully makes up for any of the deficiencies in the earlier amendment. Again, it sets forth with particularity the various rights of an accused and the rights of the subject in an investigation. It does so specifically rather than generally because, I feel that the general provision of the committee's proposal is too vague, and may in fact be too onerous for efficient and consistent administration. I urge the adoption of the amendment.

Questions

Mr. Lanier Mr. Derbes, is it your intention that this would provide to the provisions of our stop and frisk law in Louisiana, which is Article 215.1? Because if it would it be your intention to overrule the case of State v. Amphy which provides that you don't have to give a Miranda warning in this stop and frisk situation.

Mr. Derbes Mr. Lanier, the word "arrest" has specific connotations and the word "detention" has specific connotations. The requirements of this section do not vest until there has been actual detention or actual arrest.

Mr. Lanier So would it be your intention, and this is for the purpose of the law enforcement people who would have to operate under this provision, is it your intention that this provision would not apply in a stop and frisk situation under Section 215.1?

Mr. Derbes That's my intention but I'd also point out that the scope of the amendment, with respect to the circumstances of its administration, is equivalent to rather than more restrictive than the original committee proposal.

Mr. Pugh I'm very much in favor of your amendment, but I ask whether or not it's possible to make a technical change—instead of "his right to silence" "his right to remain silent."

Mr. Derbes I have no objection to that, and with permission from the Chair I would be happy...

Mr. Henry What kind of technical change do you want to make?

Mr. Pugh Instead of "his right to silence," "his right to remain silent."

[Amendment withdrawn and substituted with amendments.]

Questions

Mr. Roemer Jim, as to this matter of equivalence with the committee reporting with your first amendment, would you not say or would you not direct your remarks to the point, the contention that your second amendment, the one we're considering now is more expansive than your original amendment, but less expansive than the original committee proposal.

Mr. Derbes Well, I'm talking about, and I'd like to draw this issue rather narrowly. I'm talking about the circumstances in which it would be applicable, not necessarily the rights that would be administered but the circumstances in which it would be applicable. As I understand the original committee proposal it used the words "whenever a person is detained," and I believe that what the committee's intention was, in that instance, to say that whenever a person was detained by a law enforcement officer as a subject of an investigation or as an arrestee, that he should be advised of his legal rights. So I think to that extent they are equivalent. Now, perhaps, and I can't interpret all the committee's intentions, but perhaps the committee wanted to go further than that, but I haven't been able to discern that from speaking to the committee members.

Mr. Stinson Mr. Derbes, of course, you didn't speak to me. I don't know who you spoke to. But in my opening address as you heard and I'm sure, is that different words mean the same thing, lawyers' mouths, and they usually mean the same thing. Now, would you please make another technical amendment, and say "and any other legal rights?"

Mr. Derbes Absolutely not, Mr. Stinson. That's the reason why I'm up here. If you don't understand that ...

Mr. Stinson I understand what you're doing. Isn't it a fact that you're locking in these, and if they decide later on that he has other rights, he'll be denied those rights?

Mr. Derbes Mr. Stinson, can you please spend about fifty seconds. I tell you what, you take five minutes, and you tell us what the rights of a criminal defendant are. I tell you you can't say that in five minutes; it'll take you a course in criminal procedure or a course in criminal justice to explain all the legal rights of a defendant in any criminal proceeding.

Mr. Stinson I don't agree with you. I have taken those courses, and I have practiced for thirty or forty some odd years, and I still say when you don't know, you shouldn't try to name them. You should say "legal rights" and the courts would interpret that.

Mr. Derbes That's the reason why I'm up here, Mr. Stinson, because I think "legal rights" is too broad and too vague and almost insusceptible of efficient, professional administration.

Mr. Stinson Well, I'm sorry, but you don't agree with the committee after much research, and I'm sure you must be right and the rest of us wrong.

[Previous question ordered. Record vote ordered. Amendment adopted: 99-11. Motion to reconsider tabled.]

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course, you know we have two types of crimes — felonies and misdemeanors. What we provided for in this section is that a capital crime of which there are five now in the State of Louisiana and those felonies which necessarily are punishable by hard labor shall necessarily be on indictment by grand jury and by no other method. That is, the district attorney cannot bill a person for a capital crime or a felony necessarily punishable by hard labor merely by filing his certificate of probable cause to bring this person to trial. You have to be indicted by a grand jury. The section goes on that "no person shall be placed twice in jeopardy"; that's in line with the present constitution. It is also in line with the state constitution, insofar as once a person is put in jeopardy for a crime, then if he is acquitted of that crime or the D. A. or someone drops the charges or for some reason he's found not guilty or nol-pros, then he cannot be put in jeopardy for that singular crime once again.

I'm open to questions.

Questions

Mr. Lanier Mr. Guarisco, is it not true that under the present constitution and under Article 437 of the Code of Criminal Procedure that the only offenses for which a grand jury is presently required is capital offenses?

Mr. Guarisco That's correct, but, Mr. Lanier, there are some...I have enumerated twenty different crimes in the State of Louisiana, including capital cases of which there are five, that are necessarily punishable at hard labor.

Mr. Lanier Isn't the crime of simple burglary necessarily punishable at hard labor?

Mr. Guarisco That's correct.

Mr. Lanier Do you have any idea what it would cost the different parishes to have to have grand juries in all of these types of cases?

Mr. Guarisco The answer to that...I'm not particularly interested in the cost if it's going to suspend the rights of an individual. Are you familiar with the case of Pugh v. Rainwater?

Mr. Lanier I've seen the report that Mr. Roy had in the newspaper. I have not read the text of the opinion, but as I recall it, that went off on the question of whether or not there was a magistrate's hearing or whether or not a Bill of Information served to supplant a magistrate's ruling on probable cause. Is that correct?

Mr. Guarisco That's right.

Mr. Lanier So, what does that have to do with whether or not they should use a grand jury indictment in a simple burglary?

Mr. Guarisco Well, I think it's very simple. I think that a person that's detained at the time of arrest and before arraignment or his trial. And then he should be afforded some opportunity by a detached body, either a committee magistrate or a grand jury, of whether or not a probable cause exists.

Mr. Lanier Now, one further question. If you couple this provision with the provision in Section 14 that requires that the transcript of the testimony of the witnesses appearing before the grand jury be given to all defendants, wouldn't that pretty well mean that in all of these cases you would have discovery?

Mr. Guarisco That can be construed that way. The accused again have a right to the transcribed testimony of all witnesses before the grand jury, yes.

Mr. Derbes Mr. Guarisco, isn't the real protection

for a defendant at the outset of a criminal proceeding, the preliminary hearing rather than the grand jury indictment?

Mr. Guarisco I'm sorry, I didn't understand your question.

Mr. Derbes I said isn't the real protection of a criminal defendant at the outset of a preliminary hearing, at the outset of a criminal proceeding, a preliminary hearing rather than a grand jury indictment? Which is to say, isn't the grand jury more or less the handmaiden of the district attorney and to require a grand jury indictment in all cases punishable by hard labor is really just kind of window dressing?

Mr. Guarisco I agree with your statement that the grand jury is the handmaiden of the district attorney's office. Also, however, we have other protections for that later on in the section.

Mr. Warren I just want you to explain briefly to me what mistrial means.

Mr. Guarisco Well, a mistrial generally speaking is some reason...there are procedures that happen during the trial that may cause it to be prejudicial against the defendant and that way the judge would say what he calls a mistrial: that is, the trial is called off for what was done improperly.

Mr. Zervigon Mr. Guarisco, in order to try and vote intelligently on this section, I would like to know what percentage of cases that are brought before a grand jury by a district attorney does the grand jury fail to return an indictment?

Mr. Guarisco I don't know the percentages, but I don't think there is hardly any cases that the D.A. is hell-bent on getting a true bill on, that he is not successful.

Mr. Zervigon Well, it's my understanding that the committee stuck this grand jury provision in this particular section as a protection for the accused. Isn't that correct?

Mr. Guarisco Supposedly, yes.

Mr. Zervigon Well, if the district attorney gets an indictment through the grand jury almost every time he asks for it, I was wondering, what sort of protection that is?

Mr. Guarisco Well, Mary, I think the section has to be read in conjunction with the following sections, which gives the defendant and the accused certain protections that he does not now have, that would make the grand jury a more impartial body than the arm of the district attorney's office.

Mr. Zervigon But, it's your feeling that as of now, and we can only consider this section by section as we vote on it, going before the grand jury the percentage of cases in which there isn't an indictment might be lower than the percentage of cases nol-pros by the district attorney just on his own.

Mr. Guarisco The district attorney can nol-pros the case even if the grand jury comes back with the true bill. He can always nol-pros the case. That's no problem, but in the first instance if the D. A. just has to certify by a Bill of Information, then he is the prosecutor. I don't think he is a detached person. At least he has to go before the grand jury and they may be detached if we put these other safeguards that we intend to do in "14" to make it a more independent body.

Amendment

Mr. Poynter Amendment No. 1 [by Delegate Burson]. On page 4, line 23, place a comma "," after the word "crime" and delete the remainder of the line and at the beginning of line 23 delete the words

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Mr. Burson I'm just trying to make the point we can't consider Section 13 in isolation. We have to consider it both with what has gone before and what has come after, what will come after. We don't know what decision we're going to make yet on what comes after. My amendment would leave the present law alone. I want to state here and now that if, before the day is over, we could come up with some manageable way to define those crimes which are serious enough that we could all agree ought to go before a grand jury, that we could go with that. Well, so far as I know, nobody has been able to come up with that definition. So, until we can come up with that definition, then let's leave that question open where it should be to the state legislature to deal with in their own good time and in their own proper deliberations. Let's not freeze into the constitution something that we will find we can't live with later on and then be in a bad position to come back and try and change it. I'll answer any question....

Questions

Mr. Roy Mr. Burson, are you seriously telling the truth to this convention when you say that after asking for a preliminary examination, if a district attorney bills you on his own, that you are still entitled to the examination and not merely to a question as to the amount of the bail or bond? Are you trying to tell these people that?

Mr. Burson Mr. Roy, if you will wait a minute, I'll get the code....

Mr. Roy No, no, don't get the code; get the Louisiana Supreme Court case that decided that. I know what the code says. But isn't it a fact that the Louisiana Supreme Court recently held that once the district attorney has billed and you have asked for your preliminary examination, the examination is with respect to the amount of bail or bond only and not as to whether a charge should have been filed [filed] in the first place? Isn't that what the Supreme Court held, Mr. Burson?

Mr. Burson The Supreme Court held that in such cases it was discretionary with the court. Article 296 of the Code of Criminal Procedure says, "If the defendant has not been indicted by a grand jury for the offense charged, the court shall, at the preliminary examination, order his release from custody or bail, if from the evidence introduced it appears that there is not probably cause to charge him with the offense or with the lesser included offense."

Mr. Roy Yeah, but you're evading my question, and I'm asking you to tell the truth. Isn't it a fact that it's discretionary with the court? When you told this convention you were absolutely entitled to a preliminary examination before your judge after...even after the D.A. billed you that that is incorrect and the only thing the Supreme Court said you're absolutely entitled to is the amount of bail or bond. Now, isn't that the truth?

Mr. Burson Mr. Roy, in my experience I have never seen the court refuse to grant someone a preliminary examination when the person was charged with a Bill of Information.

Mr. Roy You're not answering my question, Mr. Burson. Don't you know, as the astute lawyer that you are, that when you told this convention that you are absolutely entitled to a hearing on the issue of the charge, that that is incorrect? The Louisiana Supreme Court has interpreted that article you have just read and to say that the court may limit it to a question of bail or bond only.

Mr. Burson Mr. Roy, I am indebted to you for the knowledge of the fact that this matter has been ruled upon by other than the Louisiana Supreme Court when you pointed out to me that the Fifth Circuit said, that a man could not be held in jail in such cases without a preliminary examination. I believe that the federal law still applies to us in Louisiana.

Mr. Roy Well, I'll let you read that Pugh case. It doesn't exactly say what you think it says. But you do admit that you were a little inaccurate in your statement previously?

Mr. Burson Not in the totality of the criminal law, which I think we've got to consider. We can't consider just the state provisions without considering the federal requirements.

Mr. Guarisco Mr. Burson, you said earlier that you didn't know whether or not you had a criterion by which a crime would be serious enough to go before a grand jury. Is that correct?

Mr. Burson I said that no criteria that I had seen proposed today was manageable and workable, that in lieu of that we should leave this matter for the legislature and leave the law alone, not venture into something that we don't know what the outcome will be, except that we do know it will further clog up the court system and make it impossible to bring criminal cases to trial.

Mr. Guarisco Do you think the criterion...the committee proposal of "a capital crime is necessarily punishable by hard labor" is a criterion?

Mr. Burson Yes, sir.

Mr. Guarisco If you are out there cutting that cane, that's a criterion to have a grand jury indictment. Don't you think?

Mr. Burson But, of course, Mr. Guarisco, all of this presumes that the grand jury is going to do something more lenient in favor of the defendant than the district attorney will do, which is an assumption that I have found not to be borne out in practice.

Mr. Pugh Isn't it a fact, Mr. Burson, that this is the only state in the Union, the only one that I know of, that allows a district attorney to quash an indictment once it's been rendered by a grand jury?

Mr. Burson As far as I know.

Mr. Pugh This is the only state that will allow that?

Mr. Burson Yes, sir.

Mr. Pugh Well, is it not a fact that if this grand jury doesn't do what you think is right to and it indicts a man, you can still quash the indictment?

Mr. Burson Yes, sir.

Further Discussion

Mr. Roy Mr. Acting Chairman, ladies and gentlemen of the convention, I rise in opposition to this amendment for several reasons. Let me tell you that I'm not so wedded, right off the bat, I'm not so wedded to the section proposed by the committee that reasonable changes would not be tolerated as far as I'm concerned. Mr. Burson does more with this amendment than meets the eye. I have been, in a sense, concerned and I've declared it before, with the fact that so many people in here who are not attorneys and the lawyers get involved in a mumbo jumbo of jargon and language, that you're not familiar with, and you're all in the dark as to what's really being said. I want to tell you that what was stated with respect to an absolute right to a preliminary examination by the previous speaker is incorrect. It is absolutely incorrect. One does not have the right to a preliminary examination by the trial judge after the district attorney bills him on his own Bill of Information. You can say it like you want, but if you are in any way influenced by that previous statement, discard it. Ask any attorney who practices in Orleans Parish how many times a person who is in jail, for whom one has been appointed to represent and files a motion for a preliminary examination. The morning of a preliminary examination the district attorney walks into the courtroom, files a Bill of Information charging the guy with armed robbery or whatever have you - it makes no difference and at that moment the judge on many occasions discharges the preliminary examination and the issue is only one of bail or bond, not whether you should be represented or charged or not whether there is probable cause for you being charged that way. Now, that's right, Mr. Burson is right when he says that we are trying to make the grand jury something more than the arm of the district attorney, and our Section 14 goes a little way to doing that. But let me tell you something else that was misstated. We do not guarantee to any person the right to have his witnesses appear in the grand jury room and interrogated by the grand jury. We simply provide, and we believe, that an independent body of citizens, this person's peers, should have the right to have brought those witnesses who are properly indicted or charged.

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... does not have to listen to the witnesses. It may say, as it has done in many occasions in the past, we don't want to hear your witnesses and there is nothing that one may do about it. That's absolutely the truth, ladies and gentlemen. Our committee never intended, and the language there does not say that you're entitled to have your witnesses interrogated by the grand jury. It only allows you, you see, the right to subpoena those people to have them there. Now, is that asking so much, that instead, if I have witnesses who know that I'm not guilty of a crime, that I was in Shreveport when the burglary took place in New Orleans and I'm some poor guy that has nothing, is it so wrong that I should be able to subpoena witnesses to present to the grand jury? Then the grand jury can say, "Mr. Roy, we don't want to hear your witnesses." I believe that twenty or twelve honest, fair, impartial grand jurors would say, "Well, let's hear that man's witnesses," and the witnesses are heard...

Mr. Roemer Chris, could you address yourself to the problem raised by Jack in regard to Jefferson Parish, the example he used with two hundred felonies a day or week or something

Mr. Roy I hate to say that I really find that kind of exaggerated. It doesn't necessarily... it may be felonies, but our provision deals with felonies necessarily punishable by hard labor. Let me tell you folks who don't know any better, there are two types of juries when you are tried. There is a twelve man jury that can convict you nine out of twelve and you can be sentenced to Angola. There is a five man jury, which is a relative felony. It would not apply to those many relative felonies at all, so there are not two hundred cases over there. But what's the argument? The philosophical argument to me is not that we...

Further Discussion

Mr. Gravel Mr. Acting Chairman, ladies and gentlemen of the House, I want to speak briefly in opposition to the Burson amendment. I think that it is far too restrictive. Just as I feel that the proposal by the committee maybe goes too far in the other direction. I honestly believe that there is a fair middle ground that we ought to reach with respect to when it is and when it is not mandatory for a grand jury to indict.

Mr. Casey Mr. Gravel, I'm sorry; let me just interrupt. I have a request from a couple of the delegates that they cannot hear. Delegates, please have your seats. Please proceed, Mr. Gravel.

Mr. Gravel I'm not going to speak much longer, Mr. Acting Chairman, thank you. I just want to point this out to the convention, and I think that maybe that the delegates may well be aware of it. Regardless of whether the Burson amendment that's before you now is passed or rejected, there will come before you next a proposal by Mr. Pugh and myself, wherein we ask that a provision be adopted in the constitution which will require that in all capital cases (of course those are cases where the death penalty may be imposed) and in all cases of offenses, the conviction for which would justify the imposition of twenty years or more at hard labor, that in those cases that the grand jury indictment be essential. All I'm saying to you is this. At the far one side of this particular problem, we have those who don't want any intervention at all by the grand jury. That is, any required intervention at all by the grand jury in any cases whatsoever except capital cases. The committee proposal, on the other hand, says that all felony cases must be the subject of grand jury indictment. Ladies and gentlemen, there is a fair, middle ground that I think you should consider. It's set forth in the next amendment and for that reason, I would urge the rejection of the Burson amendment that's before you, in order that we can consider and hopefully adopt the amendment that Mr. Pugh and I have submitted.

middle ground. You state that Mr. Burson's amendment does not evidently strike a middle ground. Doesn't Mr. Burson's amendment bring the law exactly where it is today, in other words, that only capital crimes need be brought before a grand jury?

Mr. Gravel It maintains the present Louisiana law that requires only that the grand jury be necessary in capital offenses; that's correct. Now the federal system, as you know, requires a grand jury indictment in any federal offense. That's correct, Mr. Deshotel's.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I'll just take a minute. But let me point out to you one of the inconsistencies of the committee proposal and the reason that you should adopt this amendment that has been offered. Of course there is a difference in the size of the jury that hears that case that is punishable with or without hard labor, which means it may be jail or penitentiary, and the jury that hears those that are necessarily penitentiary offenses. We say, for example, that we are trying to protect the individual. Just one example, if you will look at the statute on aggravated criminal damage to property, that is a crime that is punishable with or without hard labor from one to fifteen years, one to fifteen years either in jail or in the penitentiary. But that would not be subject to grand jury consideration under the committee proposal. It would only be those that are mandatory penitentiary. You have aggravated battery, which can carry up to ten years in the penitentiary. That would not be mandatory to be considered by the grand jury. You have thefts when the taking amounts to a value of five hundred dollars or more. You can be imprisoned in the penitentiary for ten years; that would not have to go before the grand jury. I think that the Burson amendment is a good amendment. Let us not bog down our criminal justice to such an extent that a speedy and fair trial is an impossibility. When you start talking about grand jurying, putting before the grand jury the number of cases that would fall within the category here, and as I just stated, you are subject to more imprisonment for the other offenses in many instances than you are for the ones that are subject to grand jury by hard labor, it just doesn't make sense. I think we have done enough already to the criminal justice in this state without further bogging it down. We would have our district attorneys and their assistants tied up day in and day out with grand juries and it is not necessary. One thing that the proponents of this committee proposal have not taken into consideration: the grand jury indictment is nothing more than an accusation. The grand jury is an accusatory body. The district attorney with a Bill of Information is nothing more than an accusation of the commission of a crime. Let me tell you from my experience, ladies and gentlemen, if I have a defendant to represent, I had much rather go into court representing him on a Bill of Information than on a grand jury indictment because, I can assure you that, although it should not do it, that a grand jury indictment does carry a little heavier stigma toward guilt. I think it's probably the proponents of this committee proposal of doing exactly the opposite from what they intended to do with the exception of our provision requiring that the witnesses have the benefit of counsel and the summoning [summoning] of witnesses. What this will do will be to make a grand jury an adversary hearing and it was never intended to be an adversary hearing. It is a means where your peers, your fellowmen, decide if there is enough evidence to where that individual should stand trial and that is all in the world a grand jury indictment is.

Questions

Mr. Roy Mr. Drew, if it's a forum to determine whether you should be indicted or not, don't you think that the grand jury should have the opportunity to hear your witnesses, if you and those members

Mr. Drew I don't think that it should be mandatory because you should be indicted or not, don't you think that the grand jury should have the opportunity to hear your witnesses, if you and those members

and say that the district attorney couldn't file a Bill of Information until he had talked to the defendant and all of his witnesses. It would be just as logical as what you

have been talking about a

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You and I both know that the retraction never catches up with you. Mr. Burson, but there are a lot more cases than one out of four where a grand jury is called on to do these things. It will provide that where there is a capital offense... for your information a capital offense is one that may be punished by death or in any instance where a felony may call for hard labor of 20 years or more. I say to you, ladies and gentlemen, that anybody that's faced with a possibility of losing his life or faced with a... have that matter first set in action by more than a sheet of paper signed by any one individual, I don't care who he is. I say to you that if you're going to put somebody to death, I'll say to you that if you're going to put somebody in the penitentiary for 20 years, let it be by a grand jury indictment. Now, there's no doubt, as Mr. Burson said, that the district attorney, if he chooses to do so, and the grand jury goes berserk, he can quash that indictment. This is the only state in which he can, but he can quash that indictment. Therefore, we have no fear about runaway grand juries. What worries me, in all due respect, is the possibility of a runaway district attorney, where for some reason, be it political or otherwise, and I cast no aspersions, be it political or otherwise, he decides to go after somebody. Well, he can do it with a single sheet of paper, and the man can be put to the test of having to defend himself. There's nothing comfortable about being charged and going to the expense of defending yourself and your name. If you're ever able to successfully defend your name, I suggest to you that this is a fair and reasonable amendment. I suggest to you that if you intend for a man to spend 20 years in jail or if you intend to take his life, then let it be initially started by a grand jury indictment. Are there any questions?

Mr. Henry Mr. Pugh you had said something in your opening remarks...you don't further propose to amend this amendment?

Mr. Pugh No, what I said was "I think there needs to be a comma after the word 'conviction' instead of a period." I want a comma after the word 'conviction' in the first sentence of the amendment. I don't want to change anything else.

Mr. Conroy When Mr. Poynter read this, I heard him say 25 years, but I believe Mr. Pugh said 20 years?

Mr. Pugh 20 years is what is in the sheet of paper that I read and what I proposed.

Point of Information

Mr. Conroy Is that what's in yours, Mr. Poynter...20 years?

Mr. Poynter Yes, I must have inadvertently said 25; it is 20, Mr. Conroy, and I apologize.

Mr. Henry Are you ready for the question?

All I'm doing is asking, Mr. Gravel. You're too old to be jumping up and down like that. If you jump up too high, you'll get called to that bigger convention in the sky. Would you like to speak, Mr. Gravel?

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, first, let me say that I really would prefer for the chairman not to refer to my age. I'm really conscious of it and if I wasn't, whenever I picked up the newspaper and I saw the photograph of the back of my bald head I would continue to be conscious of it, but age they tell me is not measured by the clock nor by the calendar but by the intensity of experience. Some of the experiences that I've had... confess that I am beginning...

Mr. Henry I'm going to ask you a question, Mr. Gravel. You're too old to be jumping up and down like that.

Mr. Gravel Well, Mr. Chairman, I haven't been doing too good with logic. I'm trying to drum up a little sympathy. I'm going to ask you a question, Mr. Henry. You're too old to talk on the podium amendment. I'm very, very serious about some observations that I would like to make to you. Now, please hear me well. We've already provided at the

request of the district attorneys' association that they be given not only one grand jury but the authority for multiple grand juries in their parishes. We've also passed, and I think correctly and properly, as I pointed out to you yesterday, a provision to be inserted in the constitution that makes the district attorney the single most powerful man in his judicial district by completely and totally insulating him in the discharge of his duties from any interference by any judge or by the attorney general of the state of Louisiana. Now, let me pause right here to remind each and every one of you that the district attorneys, if this constitution passes, will have at this particular point, at the point where we are now, practically no restraint of any kind with respect to the kind of action that they might take against any citizen except those charged with capital offenses. That means that for any offense other than capital crimes, the district attorney without any restraint and without any supervision, if this constitution passes, will have the authority to file a bill of information. I won't yield right now. What this amendment proposes to do is to ask you delegates to the convention to insert in this constitution a provision to the effect that before any person can be charged and prosecuted with an offense for which he might forfeit his life or might be imprisoned in the state penitentiary for 20 years or more, that there be the intervention and consideration of the grand jury selected from the people in order that that particular body can determine with the district attorney, it's legal adviser, whether or not a charge shall be made of that magnitude. Now, that's what this amendment asks that you do. I submit to you ladies and gentlemen of the convention that it is tremendously important that with respect to the massive and major crimes to which this amendment would apply that you do have some sort of insulation and let it be that which we have already provided for...the grand jury or the grand juries within the jurisdiction in which the district attorney has supervision and control. I urge that you adopt this amendment. I will now yield to any questions.

Questions

Mr. Roemer Delegate Gravel, I find it somewhat ironic, do you, that those who are proposing to expand the mandatory grand jury provisions are the very ones who had been at the mike for two days saying that they don't believe in the integrity of the grand jury system, that is they've often said at least on three occasions that I've heard, that the grand jury is nothing more than a tool of or a hand-maiden of the district attorney? So, what kind of game is this?

Mr. Gravel I really don't know that I can answer that question, Mr. Roemer, but I do think this that we're talking about a grand jury which constitutes in every instance a fair cross-section of the community, and that that body should be in a position to work with the district attorney in the massive power that we've given him before crimes of great magnitude can be visited upon the people of this state or upon the people of the district in which the district attorney is involved. I think that there were two others that wanted to ask questions in advance of Mr. Burson, who I'd like to respond to also.

Mr. Burson Mr. Gravel, would you agree that even if we left the constitutional minimum at only capital crimes, that it would be the prerogative of the legislature to come in and specify other crimes at its will?

Mr. Gravel I would agree that the legislature has the right to specify other crimes at its will.

Mr. Henry I'm going to ask you a question, Mr. Gravel. You're too old to be jumping up and down like that.

Mr. Gravel I'm going to ask you a question, Mr. Henry. You're too old to talk on the podium amendment. I'm very, very serious about some observations that I would like to make to you. Now, please hear me well. We've already provided at the

Mr. Conroy Mr. Gravel, in your amendment it states "for 20 years". On a fair reading of that, would you say that that means 20 years or 20 months or 20 days or 20 hours or 20 minutes or 20 seconds?

Mr. Gravel I'm going to ask you a question, Mr. Conroy. You're too old to be jumping up and down like that. I'm going to ask you a question, Mr. Henry. You're too old to talk on the podium amendment. I'm very, very serious about some observations that I would like to make to you. Now, please hear me well. We've already provided at the

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[Previous question, answered. Amended vote ordered. Amendment adopted. 58-55. Motion to reconsider tabled.]

Amendment

Mr. Poynter Mr. Duval is going to go with his amendments here.

They read as follows: Amendment No. 1, page 4, line 25, immediately after the word and punctuation "jury," and before the word "no" insert the following: "no person shall be denied the right to a preliminary examination unless previously indicted by a grand jury."

He has no further amendments deleting anything. That's just an additional sentence there.

Explanation

Mr. Duval I'd like to point out that this amendment does not delete any amendment that's been previously adopted. It merely adds to the section. I'd like to explain this very carefully as I think it's important. When Mr. Burson first made his remarks, there was some discussion about a preliminary examination. Perhaps, all of you do not know what a preliminary examination is. An indictment...the purpose of a grand jury indictment is to determine probable cause. If a person is arrested and a bill of information is filed against him, he can be held in custody without probable cause as to his...whether or not he should be incarcerated ever being determined. Right now, under the present law, when a bill of information is filed your absolute right to a preliminary examination becomes discretionary. I think that is wrong. I think your right to a preliminary examination should always be absolute unless there has been a determination of probable cause by a grand jury. I think, as a matter of fact, I feel like a preliminary examination is a better form than a grand jury proceeding because in many instances a grand jury is merely a rubber stamp of the district attorney whereas in a preliminary examination you have a judge. As it now stands you can't even get a preliminary examination in many parishes if a bill of information has been filed. That means that the D.A. merely files a bill...your right to a preliminary examination becomes nullified. I think the purpose of this amendment is to guarantee your right of a preliminary examination, have it not be discretionary unless there's been a grand jury indictment. I think it's beneficial. I think it's what's intended and I move for its adoption.

Questions

Mr. Burson Mr. Duval, I have two questions. Really, I agree with you as far as the desirability of a preliminary examination goes, but don't you think that this language would fit real well into an amendment to Article 296 of the code of criminal procedure?

Mr. Duval It might fit there, but I think if we're going into this thing as we are, I think we ought to make it clear here in the constitution.

Mr. Burson Do you know of any other state constitution that has such a guarantee in it?

Mr. Duval I have absolutely no idea.

Mr. Derbes Mr. Duval, I've just been arrested for disturbing the peace and I'm about to be arraigned in municipal court where the fine is ten dollars. According to your amendment, I'm entitled to a preliminary examination. Is that correct?

Mr. Duval Yes, and I wish you'd try to keep order a little more, Mr. Derbes.

Mr. Derbes And I've just been arrested for the crime of driving while intoxicated. Now, I'm entitled to a preliminary examination in that.

Mr. Duval Yes, and as you know, if that's your third time you can go to jail for a good many years on that, Mr. Derbes. You might well want that preliminary examination.

Mr. Derbes So in all minor offenses and all petty misdemeanors in all city courts as well as state courts even though imprisonment may not necessarily be mandatory and even though imprisonment may be considerably less than six months. I

would still be entitled to a preliminary examination based on your amendment. Is that correct?

Mr. Duval That is correct, yes sir. If you want it you can have it.

Mr. Lanier Mr. Duval, at a preliminary examination to establish probable cause, doesn't the state and the defendant both have the right to subpoena witnesses and present their evidence with reference to the case?

Mr. Duval That is right. One reason about this amendment is I hope it's going to substitute for Section 14. I don't think we'll need Section 14 if we adopt my amendment.

Mr. Lanier But, if you do this and a determination of probable cause is made, then you still have to go back and do this all over again for the trial of the case, don't you?

Mr. Duval That's right, Mr. Lanier, but right now you have an absolute right...if people were informed of their rights, and Mr. Denbes and you know this, they have an absolute right to a preliminary examination immediately upon arrest. But most of them don't know what the heck they're doing and don't ask for it, and the D.A. slips his bill of information in there and it becomes discretionary. You well know that right is absolute. As a matter of fact, under the law, until such time as the information is filed.

Mr. Lanier Let me ask you this, Mr. Duval, if the judge determines there is no probable cause, it does not dismiss the charge, does it?

Mr. Duval No, sir. It doesn't dismiss the charge but the D.A. sure sees the handwriting on the wall, I imagine...and also, the man is not incarcerated.

Mr. Lanier He can go ahead and have the trial, can't he?

Mr. Duval Oh, he can do it, if he so wishes.

Mr. Lanier That would mean in every speeding case, or no driver's license, or fishing without a license, in all of these cases, you'd have to try each one of these things two times, is that right?

Mr. Duval You wouldn't have to try it two times. As you well know, Mr. Lanier, a preliminary examination is not a full trial on the merits, by a long shot. All you have to determine is probable cause, moreover, as you well know, every person arrested has a right to be advised of his right to a preliminary examination. Now, he just isn't.

Mr. Pugh Mr. Duval, incidentally I'm for your amendment, not for the purpose of knocking out the section, but I am for your amendment. I want to ask you if, in your opinion, this will prevent what happens so often...is that when a man asks for a preliminary injunction...I mean a preliminary examination, the D.A. rushes in and gets a grand jury indictment. Now, is it your understanding of this when he asks for it, then that itself is the timing factor as to whether or not there's been an indictment?

Mr. Duval That's right.

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, I hope that after we get through with the Bill of Rights that I don't have to come up here as often as I do now. I'm sure you hope that much more than I do. I would be remiss in my duties as a delegate if I failed to point out the inherent error that I think that we're making as a convention in a wholesale, wholesale revision of the code of criminal procedure in the constitution. I said yesterday that we were making nine major changes, but I believe that's up to about eleven now. I'd like to contrast what the legislature did in adopting this code of criminal procedure. A law institute committee formed of defense attorneys, district attorneys, and esteemed members of the bar studied for ten years, took testimony, had meetings, read cases, and then came up and proposed a code of criminal procedure to the legislature. The legislature adopted it in 1966. It's been amended quite a few times since then. But we are here today, going to do in one afternoon, on floor amendments, what the legislature has not seen fit to do, yet. I submit to you, if these projects are worthwhile and I think that probably it

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we need to get down in a statute somewhere and set out the whys and the wherefores, not just set something up here when we don't know what the consequences of it are going to be, except this: that we do know that in every single case here you are adding an additional delay, you are making prosecution of criminal cases more difficult, and you're making it more difficult to get these cases to trial where the guilt or innocence of the accused can and should be determined. I'd like to point out to you that if we can continue in the trend that we're going in, we're going to put those who have the avowed responsibility for enforcement of the law in this state in the same position that they find themselves in in New York State now, where in New York City last year there were 50,000 felonies committed and only 900 of them were able to be brought to trial. Now, if that's what you want then by all means go ahead with it. But, when you are finished, I want to assure you you're going to be looking at a total document that many, many people of good will who feel that we need a new constitution very badly will simply not be able to swallow.

Mr. Poynter Delegate Burson sends up amendments.

Amendment No. 1, on page 4, delete lines 23 and 24 in their entirety including all floor amendments previously adopted thereto, and insert in lieu thereof the following: "held to answer for any capital crime or any crime punishable by life imprisonment, except on indictment by a grand".

Explanation

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention. We are not going to play any games about this amendment. I'll be frank to say that if you adopt it, you are going to set things approximately back in the same place that you did when you accepted my first amendment, because I think that life imprisonment would be included under capital crimes today. Now I think it's worth one more shot at it, though, because I want you delegates who are not lawyers to pay attention, please, if you have listened to anything that I have said in this convention, to show you the consequences of adopting floor amendments which change the Code of Criminal Procedure without the means that the Legislature has at its disposal to study these matters.

Look, if you will, at the language of Mr. Gravel and Pugh's amendment. It says that "you have the right to a grand jury indictment in any felony in which punishment at hard labor for twenty years or more may be imposed." "May be imposed." Now, I submit to you, we are going to have to know here, won't we, what the difference is between this and what the committee proposed? The committee proposed that only felonies necessarily punishable by hard labor would require a grand jury indictment. And I suggest to you that the change of one word from "necessarily" to "may" makes Mr. Gravel's amendment broader than the committee proposal because the committee proposal required a grand jury indictment only if, only if it was a felony necessarily punishable by hard labor. And Mr. Gravel's amendment says that a grand jury indictment for any in which a penalty of twenty years or more at hard labor may be imposed. And there are many crimes under our law which provide that punishment is with or without hard labor.

The committee proposal didn't include those. It included only those crimes defined in terms of necessarily punishable at hard labor. So we have included here with one word, one word, mind you, a whole new category of crimes within this newfound right that is a drastic change in our present law.

Now ladies and gentlemen, I ask you in all sincerity, is this what you want to do? I don't think so, and I don't blame in any sense of the word, the proponents of this amendment. I understand their philosophical position. I respect it. And under different situations, if we were talking about working out the mechanics of a statute, I think something could be worked out in this area. But I submit to you that this offhand fashion is not the way to do it. It simply isn't the way to do it. Let's do that kind of thing in the way that that Code of Criminal Procedure was adopted after due and deliberate study of the consequences of what we do. Let's not do that kind of thing by a floor amendment. Let's not give newfound delays, newfound so-called rights which

have nothing to do with the guilt or innocence of the accused. How can people get up here and keep talking about the grand jury as the rubber stamp of the D.A. and then raise so much cane [cain] about requiring a grand jury indictment for everything. Where is the logic in that position? I don't follow that argument. It just doesn't add up.

And I'm requesting to you, urgently, that you realize that unless we know the penalty for each and every crime at the present time, when we put twenty years or ten years or fifty years in the constitution, we don't know what we are including. We don't know what we are leaving out. You may get home and have one of your constituents say, "Well, you mean to tell me that before, the district attorney used to be able to prosecute a simple rape by a Bill of Information, and now you are going to require him to go through a grand jury hearing? I'm surprised at you. You say, 'Well, I didn't know I did that.'" But you are doing it when you adopt this kind of language without realizing the consequences. This is properly statutory material.

For goodness sakes, let's quit legislating in this constitutional convention in the area of criminal law when we don't know the consequences of what we are doing.

I'll answer any questions.

Questions

Mr. Pugh Can you give me the crimes now that would be applicable in the event that the people saw it to vote against your amendment and leave the so-called Gravel and Pugh amendment standing?

Mr. Burson Mr. Pugh, I had the staff prepare this memorandum which is in the hands of the delegates. I asked that it be passed out. I have not checked the accuracy of it, and I would not want to verify it one way or the other.

The only thing that I can say is I know it would include an enormous number of crimes that are not presently susceptible to the requirement of a grand jury indictment, this rubber stamp of the D.A.

Mr. Pugh This list that I have, which I assume is the same that you had prepared, has twelve crimes listed. Are there more than twelve crimes that would fall under that category?

Mr. Burson Unless I actually did the research myself, I would think the staff usually does a pretty good job.

Mr. Pugh Well, now, they said aggravated kidnapping was a capital sentence with hard labor for life, that's death under the present statute, isn't it?

Mr. Burson Yes, sir.

Mr. Pugh All right. May I ask you one other thing? Did you not say at the beginning of your argument that you thought capital crimes would have life imprisonment? Is that what you said?

Mr. Burson I said that I put life imprisonment in there because I think that when the death penalty was outlawed by the U. S. Supreme Court, that the old category of capital crimes would, now, in my opinion, and I'm certainly not a U. S. Supreme Court justice, probably include those crimes which are now punishable or would be punishable under the changes that the legislature would have to make in the law to bring the law in line with the U. S. Supreme Court decision, to life imprisonment rather than death.

Mr. Pugh Which ~~are~~ the four crimes right now that call for a death penalty?

Mr. Burson As far as I can recall, that would be aggravated rape, would be murder, would be aggravated kidnapping, and treason.

Mr. Pugh Thank you.

Mr. Willis Mr. Burson, we have provided in the judiciary plan whereby we can call a grand jury or grand juries.

Mr. Burson Yes, sir.

Mr. Willis Now, with the statistics, that you have supplied as in my parish, and with no exemptions for grand juries except those set by the Supreme Court, and with crops to

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harvest and with the grand jurors in session only six months out of the year, or two grand jurors per year, how long do you think it would take your office to handle the indictments under the Pugh and Gravel amendment for a six-month period?

Mr. Burson I see no practical way to handle them, at all, if you want to be frank about it. We have a very difficult time right now in trying to catch up on a tremendous backlog that we have. We have brought ninety cases to final determination in the first three months of this year....ninety felonies of the nature that would be defined here.

Mr. Willis And if you add the Gravel-Pugh type of crimes, how long will it take....could you do....could you handle the business with the....

Mr. Burson I would say, that of those cases which we brought to trial in that period, which represented a maximum effort on the part of our office, we would not have been able to bring to trial more than a third, at the most, of those crimes.

Mr. Willis Now, additionally, what would be the cost to the local government of those grand juries and the waste of time of district attorneys.

Mr. Burson Well, of course, the police jury has to pay for the cost of the grand jury and I don't think there's any question but what the cost would be multiplied tremendously. It would have to be. The cost to the sheriff's office operation of issuing all the subpoenas. But cost is not the issue. Those that say there should be no price tag on justice, fine. All I'm asking is, let's not give the people who are responsible for the enforcement of law, something that's impossible to operate in an offhand manner with a floor amendment. Let's let the legislature work these problems out.

I have never heard in the time that I've been concerned about those matters, any person request the district attorney's office to try fewer cases.

Mr. Willis One more question, Mr. Burson, finally. What do you think would be the humor of the grand jury who had to serve from July through December, what type of grand jury would he be if he had to neglect his business for six months? And think about what we are doing here.

Mr. Burson I would think that the humor in that case would be rather poor....

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention. Mr. Burson has made a statement that I suggest to you is absolutely and totally inaccurate. The proposal by the committee would be that there be required a grand jury indictment in every felony case where it was necessary, that the offense was necessarily punishable by imprisonment at hard labor. There are a lot more cases encompassed by that language....a lot, Mr. Burson. And I certainly would have thought that he would have known that than the cases that would be encompassed by the proposed amendment that this convention adopted and that Mr. Burson now seeks to have you reverse.

Just so you'll have it clearly before you what this amendment proposes to do, that is the amendment that you have already adopted is to require that the grand jury indict in the most serious offenses, where the legislature has prescribed the most serious penalties. Those crimes, there's been no secret about it, those crimes have been listed by the staff as being twelve in number. I am going to read them out to you: Murder of the first degree, murder of the second degree, the serious sale cases involving narcotics, manslaughter, aggravated rape, simple rape, aggravated kidnapping, aggravated arson, aggravated burglary, armed robbery, abortion.

Those are the cases in which a person can either be condemned to death, there are three of them, or in the other nine cases where he can be sentenced for more than two decades into the state penitentiary under the law.

Mr. Burson is wrong when he tells you that the amendment that you've already adopted enlarges upon the committee proposal. And I would be willing, if Mr. Burson wants to accept this challenge, I would be willing for his amendment or my amendment to stand or fall on a determination by the staff of the accuracy of the statement that he just made to you. I challenge him, challenge him to justify the statement that he made by the report of the staff of this convention.

I say, I don't suggest for one moment that he did it deliberately, I say that his statement was misleading to me. The proposed amendment that Mr. Pugh and I had, I think was clearly understood by each and every one of you at the conclusion of the debate and discussion on it. This is a second shot. This is the kind of situation that Mr. Burson is employing now that Mr. Champagne referred to the other day as being that kind of a case where people just won't give up.

Ladies and gentlemen of the convention, I implore you, don't undo something that has been done for the benefit of people who have been charged with the serious offenses defined by the legislature of this state. Keep in mind what I told you before, that if this constitution is adopted, the district attorneys are going to be the single, most powerful people within their judicial district, which, to some extent, they should be. But let's have between that power, a fair cross-section of the community of the people of the district in those instances where man, as a consequence of a criminal accusation can lose his life or his liberty for more than two decades.

Further Discussion

Mr. Gauthier Mr. Chairman, members of the delegation, I rise in support of the Jackson amendment, Burson amendment. I'm sorry. I rise in support of the Burson amendment and let me point out why....it was mentioned earlier that in a number of offenses, a grand jury indictment is now required, and this is good and fine with some exceptions.

Presently, which Mr. Gravel forgot to mention, possession of marihuana on the third offense, for instance, carries with it zero to twenty years which would mean, under the Gravel amendment, possession of marihuana, third offense, would require a grand jury indictment. I oppose this. Why? Why? Harmon Drew made a good point that a lot of people missed. As a defense attorney, I feel that going before a jury with a grand jury indictment hanging on to my client, it produces a serious disadvantage. I would rather that he have been charged with a Bill of Information.

Another reason that Burt Willis pointed out adequately, you're going to need full-time juries in a number of parishes to cope with the drug problem which they now carry life, or over thirty years. Under the Gravel amendment, they would all now have to get grand jury indictments. The workload of a grand jury would triple. It's just....I don't think it's reasonable, I don't think it's practical.

Now, if I understand Mr. Gravel right, he contends that we are providing for those crimes that the legislature feel are of a necessity serious enough for a grand jury indictment. Let me make this point. Some years ago, a couple of years back, the judges were having a hard time contending with marihuana on a first offense. They approached the legislature and said, "The penalties are too harsh. Lower the penalties so we can deal with this problem." The legislature did so, and what happened, the wrath the people fell upon and they had criticism, they were criticized publicly, they were criticized at home, and I have legislators who have told me they will not again lower penalties, but rather, would raise them, would raise them.

Therefore, you put them in a bind, and I say to Mr. Gravel, that if you want to isolate these serious crimes, then we are going about it in a backwards way. It seems to me that we are not being reasonable when we require that a third offense of marihuana go to a grand jury. It's just not reasonable, and I beg of you, think of the expense, think of the cost, and also, a lot of defense attorneys feel that we would rather go before a jury with a Bill of Information rather than a grand jury indictment. So don't think it's just the defense arguing one way. I beg of you, consider the Burson amendment carefully, and I ask you to support it.

Thank you.

[Extensive applause and discussion.]

Closing

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, when Mr. Gravel said that I was absolutely and totally inaccurate, I hope that he did not mean to say that I was intentionally lying. I may mislead you unintentionally from ignorance on my part. But I promise you that anything that I tell you from this podium is either true or I sure think it's true or I wouldn't say it.

I want to point out to you that the cases embraced in my amendment that would require grand jury indictments under the present law, would be murder, aggravated rape, aggravated kidnapping, certain narcotic sales, treason, and abortion and

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any other crimes that the legislature later decided to define in terms of a death penalty or life imprisonment. That should be clearly understood. Now, that gets us to a problem that I've probably not discussed enough, that Mr. Willis brought out.

When you've used that simple term, "grand jury," don't forget you are talking about the requirement that people be produced to man that grand jury. And those people are going to be your constituents. They are going to have to come from your parishes. They are going to have to be paid for by your grand jury. Now, we've got a devil of a time, a serious problem right now in trying to keep our jury venire for petit jury service intact. It's commonplace at home for us to draw a petit jury venire for criminal jury term where we'll have a hundred names and wind up in court with all but fifty excused for medical reasons, or excused for one reason or the other. Now what in the world, if we have that hard a time getting people to sit for a week, maybe, or maybe a day to hear a criminal jury case, are we going to do when you're going to give us the problem of having to have four or five grand juries in session in some large parishes like Jefferson, at least three in my parish? Where are we going to get the people to sit on these grand juries for six months at a time? This is the use of prosecutive power that epitomizes the difficulties that you get into when you try to legislate in this constitution. I implore you, think of these practical things. Just because something is practical doesn't mean that it's inherently of less value or less weight than a philosophical ideal.

You know, these practical problems are going to be there regardless. We can't wish them away. Now all this talk about the D.A.'s being the most powerful people in the... if the constitution is adopted, the language we've got in there about the district attorneys is a watering down of language that was in the statutes prior to this time. And as far as I am concerned, the only reason we had to put it in the constitution is because we had a determined move on by the attorney general of the state to use uproarious power that have traditionally been those of the local district attorney. And the basis that I fought that battle on was purely and simply that I thought that the administration of criminal justice should be kept a local matter and not a matter of centralized control, because that created the greatest danger of a police state that you could have. Now I don't know whether that's an illiberal argument or not, but I still think it's valid. The point is, don't decide an issue like this, for goodness sakes, on whether or not you like the D.A., you like me, you may be aggravated to death by me by this time. You've heard from me far more often that you would like to have heard. But don't dismiss the validity of my arguments that I make because of that because these arguments are legitimate, practical problems that would present an insurmountable barrier to the administration of criminal justice at this stage of our development. And I ask you, just ask yourself one question, "When, in your campaign, did you hear anybody in your district say that they wanted less efficient and effective system of criminal justice? How did you hear anybody say that they wanted fewer criminal cases to come to trial? Did you hear that, then, by all means vote the way that your constituents want. But I doubt that many of you heard that.

ordered on the Section, Section

Personal Privilege

Mr. Lennox Mr. Chairman and fellow delegates, for those of you who feel the convention has made little progress in recent days, I'm pleased to announce that there are at least two exceptions to that conclusion.

The Chairman has announced earlier in the day that more comfortable chairs will be made available soon, perhaps next week. This results from endless and diligent negotiations with the administration of Louisiana State University concluded successfully by the Chairman of the Legislative Budget Committee with his pipe wrench in his hand.

Secondly, our coffee boys have, since July 5 been supplied I brought this to the attention of our esteemed Chairman, he immediately brought the weight of his position to bear on those responsible for the catering and an immediate improvement

refined in Illinois.

Mr. Munson, Mr. Flory and I are still hopeful that someday we might enjoy that delicacy known as Louisiana cane sugar, grown in Louisiana, refined in Louisiana, using Louisiana labor, paying Louisiana taxes.

Thank you.

Reading of the Section

Mr. Poynter Grand Jury Proceedings, Section 14, at all stages of the grand jury proceedings, after arrest, the accused, if permitted to testify, shall have the right to the advice of counsel while testifying to compulsory process for presenting witnesses to the grand jury for interrogation, and to the transcribed testimony of any witnesses appearing before the grand jury in his case

Explanation

Mr. Roy Ladies and gentlemen of the convention, Mr. Chairman, this section may be even too late to think about, because we felt that if we were going to continue with grand juries, we wanted to make the grand jury more independent of the judiciary and the district attorney and once again bring it to that status that it once held and originated as a bulwark against crimes charged by the Crown against citizens.

Now, before I get into it, I have... I am somewhat concerned because even with Mr. Duval's amendment for a preliminary examination that I thought every district attorney and assistant district attorney in here wanted, you, in your wisdom, voted it down.

The present grand jury system is nothing more than an extension of the arm of the district attorney. I have with me Law Review articles that make up this entire file by scholars all over the United States, gotten by the staff, criticizing the present grand jury system. What our section seeks to do, if you will only read it, and if you will not be influenced by this district attorney paper that was put out, page 2 of it, and just read and think about what we have said and you will see that we do not violate the secrecy of the grand jury in any way, shape or form as is suggested in the first paragraph of the second page of their article. We do not violate it with respect to allowing a transcript of the testimony to be disseminated to the public, because, as a matter of fact, once the district attorney's office chooses to transcribe the records, then the secrecy of the grand jury, of course, is out of the window since the D.A.'s secretary is actually doing the transcribing.

But that's just nit-picking. What we seek to do are three things... I'll yield to your questions, Mr. Lanier, as soon as I've finished cause I'm anxious to answer yours.

The first thing that we do is, if the grand jury permits a person who is going to be charged with one of the crimes for which you have now said that there will be an indictment necessary, then that person may have his attorney present in the room while he is testifying. Now notice it says, "if permitted to testify," on line 31. The grand jury doesn't want to hear me and they are thinking about indicting me. I have no right to testify before them. If they do, my attorney may be in the grand jury room with me. Now, I already passed that any witness may have his attorney with him, so it would seem to me that the prospective accused should certainly have his attorney in the grand jury room. It merely obviates the necessity of the attorney sitting outside of the grand jury room who can neither question nor ask any witnesses about anything, it obviates the accused having to get up out of his chair when asked the question, go outside, ask his attorney should I answer, "yes" or "no," come back in "yes" or "no" he answers and what have you. It eliminates a mechanical step. That's all it does.

The compulsory process of presenting witnesses to the grand jury for interrogation, you will notice the grand jury still has the absolute right to refuse to hear these witnesses. It only allows some poor Joe Blow who doesn't have any strut with anybody, who the D.A. can't get the D.A. to subpoena a witness involved in a case in which he is involved, it merely allows him to subpoena the people and have them appear. You know some people may not want to appear as an alibi witness even though they know that I'm innocent, they may not want to go. It allows me to subpoena them and get them there. Now in my judgment, a fair-minded grand jury of citizens would hear the witness even though they don't have to. I just have the belief that good, honest people would allow a witness to testify if he comes to testify about a particular matter, at least if for nothing else more than out of curiosity.

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The third thing that we allow is that if the district attorney chooses to transcribe the testimony of any witness in a case at the time he does, he must submit it to the person who is indicted. Now, let me tell you how that works as a practical matter. The D.A. doesn't have to transcribe the testimony of the witnesses. In fact, it's so, this provision is fixed so that the D.A. can selectively choose which witnesses' testimony he will get transcribed and at that time he would have to give it to the defendant. We think that's only fair. It does not allow the defendant to get the testimony of any witness that the district attorney has subpoenaed before the grand jury, only those the D.A. transcribes. You have to understand that in a grand jury hearing or proceeding, the district attorney does the questioning of all the witnesses. He sits in there and questions, or his assistant does. A recording is usually made. That recording can be listened to by the district attorney or his assistant at any time to which the defendant or the accused has no right. But, if the district attorney chooses to transcribe, then that means in common, ordinary English, taken from the written word and put down in print, then the individual accused or indicted is entitled to a copy of it. I'll yield to any questions.

Questions

Mr. Champagne Mr. Roy, would you agree that most of the delegates here are pretty independent people?

Mr. Roy Most, probably, yes, sir.

Mr. Champagne Mr. Roy, do you know that having served on the grand jury, every time you and some of your other people get up here and say that the grand jury is a tool of the district attorney that you aggravate me seriously?

Mr. Roy I don't know if I aggravate you, Mr. Champagne, and maybe you weren't one of the tools, but I'm telling you and everybody knows whoever has written about it, that the grand jury is an investigative arm usually of the district attorney's office in most cases, not in all.

Mr. Champagne Mr. Roy, I'm only suggesting that possibly one of the reasons, or do you know, that possibly one of the reasons you are having so much trouble with your legislation in this constitution is that you are rubbing people the wrong way, Mr. Roy.

Mr. Roy Mr. Champagne, if any delegate has come here and is going to engage in personalities rather than principles, then there is nothing I can do about it, and I hope you are not one of them.

Mr. Lanier Mr. Roy, are you familiar with the principles that are set forth in Article 434 of the Code of Criminal Procedure dealing with secrecy of the grand jury meetings?

Mr. Roy Yes, sir, Mr. Lanier. I'm familiar with that.

Mr. Lanier And doesn't it state that only certain authorized persons can be in a grand jury?

Mr. Roy That's right.

Mr. Lanier And isn't one of those authorized persons the reporter who is to record and transcribe the proceedings of the grand jury?

Mr. Roy That's correct.

Mr. Lanier And isn't this reporter sworn in court to obey the secrecy of the grand jury?

Mr. Roy That's right.

Mr. Lanier Did you not state in your remarks that this was done by the D.A.'s secretary?

Mr. Roy I said, "If the D.A. chooses to have his secretary transcribe some of the stuff, or get copies and make copies of what the reporter has transcribed, it is no longer secret."

Mr. Lanier Well, Mr. Roy, if the D.A. did that, wouldn't he be in violation of these provisions of secrecy and subject to contempt as provided by Article 434?

Mr. Roy No, I don't think so, Mr. Lanier, because by the

same token, if the D. A. may use that testimony in court to make sure that a witness remembers exactly how he said it before the grand jury, he is certainly disclosing it at that time.

Mrs. Zervigon I'm saying you have in here "at all stages of the grand jury proceedings after arrest", that phrase, "after arrest", modifies everything that follows it.

Mr. Roy That's correct, I'm glad you brought that out. Which means that if they want to be investigating me right now for Mafia influence or whatever they want to, they can be doing it and I am not entitled to anything.

Mrs. Zervigon Well, would you inform the delegates that if we adopt this and do not reconsider the grand jury section in the judiciary section, exactly what sorts of procedures we'll have. It's confusing to me what rights you would have in an investigatory procedure as opposed to which rights you'd have only after arrest.

Mr. Roy Well, Mary, I'm catching some of your language and missing others and it's a....

Mrs. Zervigon Well, as I understand it, what we adopted in the grand jury section of the judiciary article, applies to all the grand jury hearings? Is that correct?

Mr. Roy Mr. Tapper's amendment? Yes, I understood it did.

Mrs. Zervigon Well, I think we could vote on this and feel a little bit more informed if you would describe to us what we'd have if we adopted this section considering what we already have in the judiciary section.

Mr. Roy Mr. Tapper's amendment simply provides that every witness who appears before the grand jury has the right to counsel being present in the grand jury room, which is what we give to the accused. If the grand jury allows the accused to testify in this case.

Mr. Avant Mr. Roy, this is neither a friendly nor an unfriendly question. I'm simply seeking information.

The words, "if permitted to testify", in this section, are they intended to apply to three of the rights that you give the accused, or only the right to have counsel present. It's not clear to me the way it's drawn.

Mr. Roy It's permitted to apply to all three. That is.... if you're talking about....does the witness....do you have the absolute right to have a witness in the grand jury room? You do not. Only if the grand jury chooses to hear your witness.

Mr. Avant Well, that's what bugs me, it says....

Mr. Roy If permitted to testify refers to the accused, that you have the right to counsel with you.

Mr. Avant Well, now, let's look at the accused, is not permitted to testify, he has no absolute right to testify.

Mr. Roy That's right, he has none.

Mr. Avant So, the grand jury says, "We don't want to hear the accused." Does he then have the right to compel other witnesses to appear and testify?

Mr. Roy Yes, sir, he would have the right to compel witnesses by compulsory....by subpoena to appear there and at least tell the D.A....unless they are going to be charged with aggravated....with armed robbery, I've got three witnesses here, I wish you'd make it known to the grand jury. The foreman can say "We don't want to hear your witnesses, they can go back home." That's it. But, he has the right to get them there by judicial process.

Some witnesses may not go on their own, you know, Mr. Avant.

Mr. Avant I understand. And then the right to the transcribed testimony of any witness is an absolute right, it's not dependent upon whether the accused has testified or not.

Mr. Roy That's correct. If the D.A. chooses to transcribe it, he gives a copy.

Mr. Lanier Mr. Roy, it seems to me that a lot of "accused

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the requirement for a grand jury to be present. Although these are not, necessarily, arrested. Isn't that correct?

Mr. Roy: Yes, what are they?

Mr. Darbes: Wait a minute....wait a minute....at all stages of the grand jury proceedings, after arrest, the accused, or someone else.

What about all those people who are indeed a subject of a grand jury investigation and who are indeed in danger of being deprived of their rights who are not necessarily arrested?

Mr. Roy: That....we knew we could not deal with that, Jim. I wish we could have, but we couldn't because we knew the convention wouldn't go along with it because that would impair the secrecy of the grand jury if they had to let people know whom they were investigated.

But once you've been arrested for the crime of, let's say, armed robbery, as we now have just....amended our section, then you would be that "accused" who would be permitted to testify and have the right to counsel if the grand jury heard you.

Amendment

Mr. Hardin [Assistant Clerk]. Mr. Arnette sends up the following amendment.

Amendment No. 1, on page 4, delete lines 29 through 32 in their entirety. On page 5, delete lines 1 through 3 in their entirety.

Explanation

Mr. Arnette: Well, this just seems to be in the nature of a technical amendment, though actually, it is fairly technical in nature when you listen to the explanation. It deletes the entire section, but let me explain to you why I thought it would be wise to delete this section.

The first clause which gives the accused the right to have his attorney present in the grand jury room while he is being questioned, has already been solved by Section 37 of the Judiciary Article which we have already adopted which says, "Anyone testifying in such proceedings shall have the right to the advice of counsel while testifying." So there is no need, whatsoever, to put this in this article since we have already taken care of it and gone even farther than that in a preceding article.

Now the last clause has to do with the transcribed testimony of any witness saying the accused has a right to this. Well, we have already adopted in the same Section 37 of the Judiciary Article, an exact opposite, exactly opposite point of view which stated, "The secrecy of the proceedings, including even the identity of the witnesses appearing, shall be provided for by law." So, we have already decided this once in this convention. We've reconsidered, laid it on the table. Let's not dig up old things.

Now the only other thing that appears in this particular section that could have any meaning at all is saying that the accused would have a right to compulsory process for presenting witnesses to the grand jury. Well, it's my understanding of the way the grand jury works is that the person who does the questioning is the district attorney or his assistant. No other person may do any questioning which means his counsel could not ask him questions to present a case in the grand jury or something of this sort. If the district attorney just simply chose not to ask him any pertinent questions, he would not have to. So there would be no reason to have this particular person there, so it's an empty right at best.

So, therefore, I don't see why we need to have any of this section in there, whatsoever.

Amendment

Mr. Brown: Mr. Arnette, do you believe that the judicial article provision, that secrecy shall prevail, would apply to the accused, also? In other words, this particular provision states that the accused shall have a right to the testimony, and as I read that, I got the impression that "Yes, everything would remain secret, but the accused, himself, probably through his attorney, would be entitled to a transcript of the proceedings." And you are making a major point of the fact that this is in direct conflict. I don't see the conflict. Would you explain a little bit more, why there is a conflict between the two articles?

Mr. Arnette: Well, the reason I think it's a conflict, is that anyone who is not present while the testimony is being taken, will not know of any of that testimony.

In other words, the district attorney is present. He has a right to that testimony. He has a testimony in his possession. But no one else who is not present has a right to that testimony. And that's exactly what we said. We wanted to protect the identity of these witnesses who are appearing before the grand jury for reasons that are obvious. Because grand jury subpoenas, sometimes, in cases of investigation, shed a bad light on people. And we wanted to prevent this. But if we let certain people know what witnesses are appearing and things like this, I don't think....I think we ought to decide that we didn't want anybody to have that information.

Mr. Brown: Well, but the thing I'm asking is, the only person allowed to get this information is the accused under this provision. Is that not correct? Only the accused, and so I'm trying to differentiate from what you are saying. I don't see the conflict. I don't see a direct conflict with the section you mentioned in the judiciary article. Only the accused will be allowed to get this information. See what I mean?

Mr. Arnette: Well, all I'm saying, Senator, is that we have already decided that no one should have that information, and that's what we decided. We did not make an exception for the accused. He does not presently have a right to that information, as I understand it. And I don't see why we ought to give it to him. The whole purpose of Section 37 as we adopted it, as I understand it, was to keep even the identity, definitely the testimony, but even the identity of the witnesses secret.

Mr. Stinson: Mr. Arnette, did I understand you to say that the only one that asks questions in the grand jury room was the district attorney or his assistant?

Mr. Arnette: Well, the grand jury does, also.

Mr. Stinson: Well what....you didn't say that, though, did you?

Mr. Arnette: No, I neglected to say, Mr. Stinson.

Mr. Stinson: Well, your reasoning then, would not follow through. You said that they, naturally, would not ask the defendant or his witnesses any questions....

Mr. Arnette: I did not say "naturally." I said "If he so chose, he wouldn't have to," and possibly the grand jury would not be guided to ask him any questions, either.

Mr. Stinson: Don't you think that a grand jury of twelve, true, impartial people not obligated to the district attorney, are going to want to hear both sides of the picture and should have that right?

Mr. Arnette: They might want to, then again they might not. They are guided by the district attorney, they are guided by his assistants, they do ask questions, but it's....

Mr. Stinson: Now, you don't mean they are guided by them. You mean they are advised by them.

Mr. Arnette: They are advised by them. That is correct.

Mr. Arnette: Are you aware of the fact that the

Mr. Arnette: Mr. Pugh, when you smiled at me I knew it was going to be an unfriendly question.

Mr. Pugh: Ah, no. I have got two of them in fact.

Are you aware of the fact that the existing jurisprudence in the state not necessarily where there is a requirement for a transcript, but where it is transcribed that the defendant is entitled to a copy of it?

Mr. Arnette: I am aware of that. I would like to know if you are aware of that.

Mr. Pugh: Yes. One other question. Would you agree or disagree with this statement made by a Justice of the United States Supreme Court in a decision rendered on January 22, 1973, when he was talking about the grand jury. "This great institution of the

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past has long ceased to be the guardian of the people for which purpose it was created at Runnymede. Today it is but a convenient tool for the prosecutor too often used solely for publicity. Any experienced prosecutor will admit that he can indict anybody at any time for almost anything before any grand jury" from the United States Supreme Court.

Mr. Arnette Mr. Pugh, I definitely agree with that. That is exactly why I think we ought to keep the testimony of the witnesses secret. We ought to keep the identity of the witnesses secret. You are speaking in favor of my amendment.

Mr. Pugh As I understood your amendment, it was not to allow....

Mr. Arnette It would delete anyone having a right to this information and I think what is happening is people are being crucified in the papers for things that happen at grand juries and even witnesses that have....

[Previous question related. Record
on previous question. Amendment adopted.
Section 15. Motion to rescind not tabled.]

Mr. Henry Then that does away with the effect of the section.

Reading of the Section

Mr. Poynter Section 15. Fair Trial
"Section 15. Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witness, and to present a defense, and to take the stand in his own behalf."

Explanation

Mr. Stinson Mr. Chairman, and fellow delegates, this is very little if any change from our present constitution. Now if any questions, I first want to at least have an opportunity to read this and briefly explain, which I did not do before. I'll answer any questions at the end of that. First, it says "every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or any or...element of the offense occurred, unless venue be changed in accordance with law." Now certainly I don't see how there could be any objection to a statement of that type and naturally it follows to that the legislature in its wisdom will provide any additional change as to venue, as to... it is not barring the legislature after due deliberation to change, but it is guaranteeing those elements which certainly under our form of government the individual is entitled to and that's that says "no person shall be compelled to give evidence against himself." That is in our present constitution. It is in the United States Constitution and the jurisprudence of all courts have held that you can't be required to testify, but of course as it said later on you do have the privilege and right if you so wish. I could see how there could be no objection to that statement. "An accused shall be entitled to confront and cross-examine the witnesses against him, and to compel the attendance of witnesses in his behalf to present a defense and to take the stand in his own behalf." Now I take it there are about three features there. First, on his trial naturally the state has to prove with their witnesses confronting the defendant as he is guilty and he through his counsel has the right to cross-examine those witnesses in his behalf. Certainly there could be no objection to that. Likewise to compel the attendance of witnesses. That means that any witness that the defendant wants in his behalf he

has the right to go to the Clerk of Court and have them summoned to testify when the defense presents their side of the question and then to take the stand in his own behalf. As you know he cannot be called by the....

Mr. Henry Mr. Stinson, wait just a minute let me get you a little order, please.

Mr. Stinson He cannot be forced at the present time to testify against himself and the fact that he fails to do so cannot be commented on by the prosecuting attorney. It is a reversible error if he does. But if he does wish to testify he has the right to testify and of course be subject to a cross-examination by the District Attorney. I would like to urge the acceptance of this recommendation. It's very little change; however, it goes more into detail in some of the instances but one thing we did not go into as to the venue person in the present Constitution because it is a statutory matter and the legislature can go into detail if it feels necessary in that instance.

Question

Mr. Derbes Mr. Stinson, I was wondering if you and the committee wouldn't voluntarily remove the language "take the stand" and put in the word "testify" which seems to me accomplishes the purpose....

Mr. Stinson No, sir, I think that does the purpose. There is a witness stand and there is no other stand that he could possibly get on except the witness stand.

[Motion for the previous question
in the affirmative.]

Point of Information

Mr. Gravel Mr. Chairman, I would like to object. I have... I didn't know we were going to move that fast. I have an amendment.

Mr. Henry But Mr. Gravel these are the same things that we have been going over and over already.

Mr. Gravel No, sir. Not my amendment. It is not.

Mr. Henry Well it looked like it to me. Now the convention has spoken on this don't you think Mr. Gravel in all honesty?

Mr. Gravel Are you talking about the amendments about furnishing statements to the defendants?

Mr. Henry Well in effect the convention has spoken on that don't you think?

Mr. Gravel Absolutely not. Has not.

Mr. Henry All right.

Mr. Gravel We are talking about the amendment that reads....

Mr. Henry ...prior to his trial....

Mr. Gravel No, sir the convention has not spoken on that, Mr. Chairman.

Amendment

Mr. Poynter Amendment sent up by Delegate Gravel as follows:

Amendment No. 1. On page 5, line 13, at the end of the line, add the following:
"Prior to his trial, every defendant shall be furnished with the transcribed testimony or statement, for or against him, of any witnesses appearing before any official or employee of the state or any of its political subdivisions or any grand jury which participated in any investigation of the case for which he is being prosecuted."

Mr. Gravel Mr. Chairman, if I am correct I would like to address a question of the Chair before I proceed. My understanding that the amendment of Mr. Burson is germane to Section 14.

Mr. Henry That is correct.

Mr. Gravel Then I think that technically this instead of being the amendment that I had prepared it to be to come at the end of Section 14 would have to now be technically changed so that it would be Section 14.

Mr. Henry Mr. Gravel, we are on Section 15.

Mr. Gravel Mr. Henry, I beg your pardon. I beg your pardon. I'm in error. I beg your pardon.

Mr. Henry You are just creating another paragraph right now.

Mr. Gravel That is correct, yes sir.

Mr. Henry All right. So it will be in Section

Point of Order

Mr. Gravel To raise a point of order, Mr. Chairman. I think that we have adopted a rule which requires that amendments be germane to the section under consideration. Am I correct or incorrect in the view of the Chair that the amendment which is proposed would be germane to Section 14 which we just threw out and in its entirety since it concerns exactly the same subject matter?

Mr. Henry It is a germane amendment Mr. Burson proposed to add to the parish...you could say it has to do with the fair trial so I would rule it...it is germane.

Explanation

Mr. Gravel Mr. Chairman, first of all let me say this that when the Chair suggested that this matter had been covered by previous amendments I stated that this was not correct, and I want to respectfully restate that position. This proposed amendment I hope it has been distributed, does everyone have a copy of it? This proposed amendment has not been covered by this Convention nor has it been discussed at all. Although I must confess that there may be some things that we have touched upon in relation to prior amendments that have been acted upon that some bearing on this is of a very neutral theme of this proposed amendment. I won't yield until I get through Mr. Chairman. Now I can't understand really Mr. Burson's suggestion or that this is not germane because I respectfully submit to this entire convention that this amendment goes to the very heart of the concept of a fair trial. I wonder if those of you who are interested in listening to what I have to say would stop and realize at this particular point where we have left a person charged with crime under a so-called Bill of Rights. Where does that person stand at this moment in our deliberations at this period of our achievement? He has no rights. He has not yet been accorded any right, and he is in a very dangerous position to him. You have taken away his right to ask that witnesses go before the grand jury that might indict him. What right and I ask you to think of this, what right have you given to the potential defendant under the Bill of Rights that gives him any insulation or protection or right of any kind and I submit none. The heading of this section is a Fair Trial. Now let's talk for just a minute about what might be encompassed by a fair trial. Most defendants, practically every single defendant comes into court as a consequence of an indictment or a bill of information which has been the result of a full scale investigation by trained law enforcement officials, throughout the State of Louisiana. Most indictments, most bills of information come to

Some of them hear about it first when they read about it in the newspaper. A great deal of work has been done by the prosecution arm of state government in order to get to that point and yet the defendant or the potential defendant must then and there start from scratch. All that I am asking you to consider in this amendment is this. Now listen to me very carefully and then I want you to search your conscience and see if you can vote against it. All I am asking you to do is to remember that this potential defendant who has got to go to trial now this amendment takes into consideration nobody else but one who is charged and must stand trial. It says constitutionally that well if you have got to go to trial then you are entitled to the statements both for and against you of those witnesses that were interrogated by the professional enforcement arms of state government by the formal grand juries that have been impeached and you are entitled to know what those witnesses said for and against you. Does that comport ladies and gentlemen of this convention with the concept of a fair trial? Or is it right to say that the district attorney can retain within his records and within his files information that might be helpful to the defendant but nobody under the sun knows about it except the district attorney? What this amendment would propose to do would say to the State of Louisiana that you must treat a defendant who is going to be tried and who is going to possibly suffer as a consequence of that trial you must treat him fairly and let him know what is good and what is bad in the official files of the state. Now that's what this amendment proposes to do. Keep in mind, keep in mind that this is not Mr. Burson, dear friends, I have handled. You know a lot of the delegates have gotten up like Mr. Stagg and Mr. Burson and many others and have told you about the cases that they have and how this consequence flowed from this action or that consequence flowed from some other act. I think you too Mr. Lanier to some extent [unclear] think. But let me tell you about a case that I have handled by the president...present president of the District Attorneys' Association, Mr. Mamoulides, Mr. Ed Ware. Let me tell you about a case Mr. Stagg who appears to be absent that I have defended. Where a colored man was charged with the aggravated rape of a white girl, was tried and sentenced to death and for several years, for six we found out that he asserted that man's rights throughout the state and federal courts and let me tell you that in that seventh year, in that seventh year when he had been granted a new trial by the federal courts because the courts of Louisiana did not accord to him his constitutional rights, Justice Tate. When time came to consider whether he was going to be tried again for his life; the district attorney found in the file of the state a sworn affidavit, sworn affidavit by the prosecution's witness that had testified at the first trial that she could not under any circumstances identify her assailant whom she had identified upon the trial that resulted in his conviction and in the imposition of the death sentence. Now let me say in fairness to that district attorney he had the courage to... after finding the false basis for the prosecution to walk straight forward into the courtroom in Rapides Parish and dismiss the charge and set that man free. Now how many times, think of this, how many times do you think it happens that an investigator working officially for the prosecution gets a statement from a witness or from somebody who purports to know something about the offense that is exculpatory and helpful to the defendant? Many times and you know it, but how many times does that information surface? I have tried and I have handled as many criminal cases as I suppose as almost anybody here. Now yet, for every one time I have gotten from the state any exculpatory or helpful statements for the benefit of the defendant. Ladies and gentlemen of this convention, read this amendment carefully; it hasn't been covered before, read it carefully. After you have read it, don't listen to anybody tell you that this is going to clog the court dockets. No, this is going to cost the parishes a lot of money. Listen to your heart and your conscience and see if you

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don't believe that it is right for us to say in this constitution that a person who has got to go to trial should be entitled to the written, transcribed statements of those witnesses who in the course of investigation said something for him or against him. Just keep looking at this amendment and see whether in your heart you can't comport this concept with the idea of the title of this section "Fair Trial." Thank you very much.

Questions

Mr. Burson Mr. Gravel, would you agree that up until now while we may not have given the defendant any new rights other than this new right to counsel while testifying before the grand jury that we have not taken away a single right that he has under the present law?

Mr. Gravel I don't think that I could truthfully say that we have taken away any constitutional right spelled out in the adequate [antiquated] Constitution of 1921 but we have not accorded to him Mr. Burson the rights to which he is entitled under an enlightened modern society.

Mr. Sandoz Mr. Gravel, could you tell me the names of any states which have a similar provision in their Bill of Rights?

Mr. Gravel I don't know of any although there may be some.

Mr. Sandoz Now don't you think Mr. Gravel that...

Mr. Gravel Let me just say this. There may be some states that have it. Actually this concept of course is one that very well would fit in any state's Bill of Rights.

Mr. Sandoz But you do not know of any that have this as a precedent at this time?

Mr. Gravel I didn't take it from any other state.

Mr. Sandoz All right. Now my next question sir is this. Could not this be well taken care of in a legislative act?

Mr. Gravel It could be taken care of but it could not be safeguarded Mr. Sandoz.

Mr. Sandoz Isn't this really statutory material, Mr. Gravel?

Mr. Gravel No, sir, it is not. This is a right to a fair trial. I can't think of anything that more properly belongs in the constitution and particularly in this constitution than this particular provision.

Mr. Derbes Mr. Gravel, wouldn't this amendment require production by the state of virtually all police reports?

Mr. Gravel It would require the production of police reports or statements of witnesses that police reports were statements of witnesses that had any information about the offense for which this man was being tried either for him or against him, it would require it. In my judgment sir, it should be required.

Mr. Derbes In other words if the police reports were for example a summary of observations made by the police officers in the investigation of the offense. It would require production of that would it not?

Mr. Gravel If it was a statement of a witness, I don't think

Mr. Derbes A police officer can also be a witness.

Mr. Gravel Well I don't think he can be a witness to hearsay testimony. It would depend on the nature of the statement.

Mr. Derbes He could be a witness in direct evidence, and in direct support of the conviction and wouldn't it also require if in the police report any summaries of witnesses' statements were made in other words, "I posted officer spoke to Deshotels and Deshotels said, Gravel was seen on the corner of Tulane and Broad doing something." It would require production of that as well.

Mr. Gravel No question about it in my judgment. In other words if there was anything from a police officer who was a witness at the trial or a witness in any respect it would have to be produced and Mr. Derbes, my point so there will be no misunderstanding is that it should be produced.

Mr. Lanier Mr. Gravel, is my understanding of the Fifth Amendment of the United States Constitution correct that this type of information could not be ordered produced from a defendant?

Mr. Gravel What, this particular....

Mr. Lanier This type of information, the statements in his files of the witnesses that he has from a defendant?

Mr. Gravel It would depend on the nature of the statement. This provision is for the rights of the defendant and would have nothing to do with what he would have to do.

Mr. Lanier No, but I mean the state could not get this type of information from the defendant just the defendant could get this type of information from the state, is that correct?

Mr. Gravel Well we are getting into something entirely different and I am sure you are sure of it. You know it.

Mr. Lanier I think we are talking....

Mr. Gravel Wait a minute let me answer your question. If we are talking about getting from the defendant self incriminating statements that in my judgment would be barred by the Fifth Amendment to the Constitution.

Mr. Lanier The state cannot discover from the defendant is that not correct?

Mr. Gravel Not self incriminating statements that would be correct. Now it might be exculpatory statements but not self-incriminating statements.

Mr. Lanier Can the state discover anything from the defendant or his counsel.

Mr. Gravel Well not under our existing law.

Mr. Lanier So that would mean that....

Mr. Gravel Nor can...now just a minute nor can the defendant discover under existing law in a criminal case anything from the prosecution.

Mr. Lanier In that way they go in even, right?

Mr. Gravel Well they are not supposed to go in. They are supposed to go in with the presumption of innocence based upon you know that constitutional concept.

Mr. Lanier But with yours then the defendant can get this information from the state.

Mr. Gravel Obviously, Mr. Lanier. Obviously, that is what this is all about.

Mr. Stinson Mr. Gravel, if under the present law and under yours too, if the defendant himself appears before the grand jury and he has witnesses that the district attorney summoned, the district attorney has recording of those witnesses, doesn't he?

Mr. Gravel Would have that, yes.

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Mr. Stinson. The amendment if would be right to both parties?

Mr. Gravel. No question about that.

Mr. Stinson. Now Mr. Gravel, really the person that your amendment is going to help is the man of lowly means that can't hire investigators to sit outside of the grand jury room and see what witnesses come in and then investigators to check out isn't that a fact it's the poor man that this is going to help.

Mr. Gravel. That would certainly be a by-product of it but it is not limited to that it is the concept primarily, Mr. Stinson, would include that but mainly the concept here is that whatever is available to the state by way of evidence of testimony from witnesses that that should be made available to the defendant who's going to be tried if you are going to have a fair trial.

Mr. Stinson. Now isn't it also a fact that this secrecy that goes against, in my opinion, the rights of the defendant, in fact that the witnesses that are summoned by the Clerk of Court is secret and you don't have access to who has even been summoned to testify isn't that correct?

Mr. Gravel. Yes.

Further Discussion

Mr. J. Jackson. Mr. Chairman, ladies and gentlemen of the convention, I have somewhat intentionally attempted to observe our proceedings today and because I am not familiar with the intricate proceedings of criminal injustice but more so with the effects of it and some of the loopholes of it I have somewhat just chosen to take the position of voting my convictions and asking people who shared my convictions to vote with them. But as I look at this section called the Bill of Rights, I have to somewhat agree to Mr. Gravel. I think that when we talked about the Judiciary Department and particularly when we talked about the Executive Department that we provided expanded powers in terms of protecting life, safety, and well-being of the citizens of these state through the Attorney General's office. I think when you talk about a section entitled "Fair Trials" and the lead out sentence says that every person and I don't have it with me but to the effect it says that "every defendant is presumed innocent until proven guilty." It says to me that whether this person is criminal and you

think he committed the crime that we have to violate which is more sacred than our present grand jury system. We cannot violate the constitution and national concept that every man is presumed innocent because...until proven guilty and I suggest to you that based on arguments that I have heard that we are getting away from that. I think that we are getting away and we are just presuming that if a grand jury hears a defendant or hears testimony that that person is automatically or until some presumably the degree guilty. I think Mr. E. J. Landry brought a very keen example of the kinds of possibilities that can happen. We talked about the cost involved in the transcript and the availability of information to a witness. The defendant's suggestion to you is that you strongly believe that of some of the sacred basic fundamental principles even though it may at some point provide a thin line in terms of a criminal but that when if you really...if you are really concerned about that sacred principle and the infringement that we are closely coming into then I suggest that without the adoption of Mr. Gravel's amendment that you leave that door open. I think that up to this point that that is what we have basically done. Now I don't know if that's going to be the amendment that I have heard things about cost involved and I suggest to you that if we are talking, we are talking about the Bill of Rights Section and stated the other amendments. I think that that is what we should have there ought not be any cost on justice. I think we have said enough to me on this on the

four and I am not sure if I have suggested it. I have talked to them. I understand that we must have law and order in this country, that we must have law and order in the state but I am also cognizant of the fact of many of my constituents and many people who have said that the criminal justice system has not been under the present constitution has not provided adequate redress that people who are falsely accused and I suggest that if things are so perfect at this point in terms of our deliberation and we ought not provide, expand or attempt to lighten up the guarantee that the defendant can keep the presumption that a person is innocent until guilty. Then why do we have these various state commissions on law enforcement and criminal justice? There must be some problem wrong. You are constantly having reports coming out this by these various commissions throughout the United States recommending certain changes in the criminal justice system and I suggest to you that those who are very concerned about criminals being illusive from justice. I don't see and nobody has fully explained to me how that is possible. I contend again that the whole matter of trials is the matter of legal technicalities. We cannot provide for every loophole that exists that I think that if we want it and we were so concerned about the problems that would arise, then we had the Executive Department proposal. We have had the Judiciary proposal. We are in the article that deals with the fundamental rights of a citizen and I want to suggest to you very sincerely that I am kind of afraid because when speakers get up here it is an automatic assumption and I don't know if you feel the same vibrations that I do that everybody that goes before a grand jury is guilty. I agree with Mr. Burson that as you know we sometimes get very confused when we talk about a criminal defendant and a defendant in criminal court. I am more inclined to believe at this point that we are talking about criminal defendants rather than a defendant in court because it is becoming very obvious that we are making the presumption that persons are guilty until proven innocent and that if we do anything drastically to change the present procedures then what we are doing is allowing criminals to go free or clogging up the judicial system and I say if that's the way we feel about it then why don't we recommend in this constitution an abolishment of all these state commissions and city commissions and parish commissions on law enforcement and criminal justice.

Further Discussion

Mr. Guarisco. Ladies and gentlemen of the convention, we had a chance to make some innovations in this country on the criminal justice system or the criminal justice system in the last section and we deleted it and I think we made a big mistake. We have a chance to make up for that mistake with the Gravel amendment while it doesn't go as far as I would like it to go, it's the best we can get and I think we should pass it. I'll tell you why. On the one hand you have the state, the sheriff's office, the police department, the F.B.I. the district attorney and come what may, on the other side you have got reasonable doubt. That is all we have got. I am not a prosecutor and I am not a defense attorney although I am a lawyer. I handle very few defense counsel... defense cases. In fact right now a black boy is standing trial for the attempted fire bombing of my parish home so I am sure not a prosecutor or a defense counsel but I believe in fairness. Now what is so horrible about allowing the defense just to know what was written down and what was transcribed? Why can a district attorney hold on it for... you can't see it this is a secret. You find out when we try the case we are talking about discovery. Mr. Burson will come up here and say oh, but I costs a lot of money. Money, that's a good reason to suspend the rights of an individual, or it takes too much time, or it's going to involve too many people. That's another good excuse. I am a lawyer and I know that the law is the law. I pass the amendment and I think we will make some history in the criminal justice system.

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this state. That's something we can go back and say, "look, we made a change and we did something for the better." I can't for the life of me see how this is going to get somebody off. I yield to any questions.

Question

Mr. Roy Don't you agree, Mr. Guarisco, that the facts of a case are the facts and they can't be changed? There is nothing wrong with the presentation of facts either today or next week or the next month and that the jury will determine the case on the facts.

Mr. Guarisco That's correct, absolutely.

Mr. Juneau Mr. Guarisco, this troubles me greatly. The amendment says, "any statement before any official, employee of the state, or any of its political subdivisions." How in the world would a prosecutor know in time eternity, under this individual would have given a statement which wouldn't have been at the direction of the grand jury and/or the prosecutor? How would he know that he's got all that information and then three months later he comes up, "Look, you didn't give me all the information?" The prosecutor said, "I didn't even know about it; it never was used." He said, "Well, an employee of the highway department in Lafourche Parish took a statement from him."

Mr. Guarisco Mr. Juneau, if he had it, I want him to give it. That's all.

Mr. Juneau He doesn't have it, Mr. Guarisco. The question is, if he doesn't have it, but there is a statement, what happens under that amendment?

Mr. Guarisco He can only give what he has.

Mr. Juneau It's reversible error, is it not?

Mr. Guarisco I don't know. No.

Mr. Juneau You don't know? The second question that I have, Mr. Guarisco, we're providing, and I appreciate this amendment, a discovery statute for the defendant. Why . . . don't you think it would be appropriate that we would put discovery statute in for the state to put it back in balance? Would you agree with that?

Mr. Guarisco No. The state is not going to go to jail, Mr. Juneau.

Mr. Juneau You wouldn't give the state the equal discovery rights that you would give a defendant? I'm merely asking for discovery.

Mr. Guarisco Of course not, the state is not in the driver.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I don't want you all to get the impression I'm a criminal lawyer because I'm not. I'll only handle a criminal case if it involves due process. Now, I only rise to answer two questions that were propounded. One question was "How many states have adopted, substantially, the same provisions as these?" I'll tell you that in these states, the same provisions are there: Illinois, New York, California, Pennsylvania, New Jersey, Wisconsin, Minnesota, Delaware, Arizona, Nevada, Oregon, and New Mexico.

In answering the other question, a question was "whether or not the district attorney had the right to compel any information from a defendant?" Let me tell you that the Code of Criminal Procedure has an Article No. 66. Under Article No. 66 of the Code of Criminal Procedure, the district attorney has the right to subpoena a person into his office for testimony. I am of the opinion that the man does not have to answer the questions, but coupled with that same section is one that provides that he must, under a subpoena, bring with him such documents as

may be subpoenaed. He's got an absolute requirement under the law, in my opinion, to bring those documents. So to say that the district attorney has no possible discovery is wrong. Let me say this, that the recent legislation does not take power to the attorney general.

Further Comments

Mr. Kean Mr. Pugh, the list of states that you just read off that had a substantial . . . I don't know what similar provision as this, was that in the constitution of those states?

Mr. Pugh No sir, I just said that they might have a provision. Now, I can give you every state that cites what I gave you, if you want it.

Mr. Kean Well, I just wanted to make it clear that the list of states you referred to deal with this problem by a statute. Is that not correct?

Mr. Pugh No, I have read all the cases; it's been two years since I read them. I can't tell you whether they are constitutional provisions, statutory provisions, or jurisprudential rules nor . . . I imply or indicate that they were. All I said was these same provisions were, at this point, in these various states.

Mr. Kean I'd like to pursue the question that Mr. Juneau raised briefly, previously, and to which he got no response. That is, and it bothers me as well, this amendment, as I read it, goes farther than asking for statements that the district attorney might have or statements that might have been made before the grand jury. It speaks in terms of witnesses who appear before "any official, or employee of the state, or any of its political subdivisions." Suppose the parish of East Baton Rouge made some kind of investigation and got a sworn statement from a witness. That witness and that fact of that statement was not known to the grand jury or to the district attorney and they, nonetheless, indicted a person and they went to trial. Would that person have a right to quash that case on the grounds he hadn't been furnished statements that the district attorney nor the grand jury even knew existed?

Mr. Pugh Well, first of all let me answer you by saying I did not draft Mr. Gravel's provision. I appeared here for the purpose of answering two questions that were asked. It may well be that the district attorney may or may not have knowledge of some of these statements, and if you ask me whether that goes beyond the Jencks Act, I think it does. Incidentally, in addition to the thirteen states that I read out, the Jencks Act has been applied or has been adopted by Congress and it also provides for discovery.

Mr. Kean I understand that, I'll get back to my point. If the district attorney had no knowledge of a statement made by a witness before an official, or employee of the state, or some political subdivision under which circumstances he did not, could not furnish that statement to an accused, would the result of that be a dismissal of the charge by reason of the fact all such statements were not given to the accused?

Mr. Pugh Absolutely, because, that's what the Jencks Act says. It says that's what he's got.

Mr. Kean Well, that's what I think, because I know the amendment because it would seem to imply that he would have to give something that he doesn't have. Would you not read that into the amendment?

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I suppose it's no use to me either apologizing for anything or worse still. I think I have said a few things that I think are wrong with this proposed amendment. The first thing is, it may only provide

we just voted out in its entirety, that is, that the defendant had a right to the transcribed testimony of grand jury witnesses, but it goes much further than that. In addition to the grand jury witnesses, he would now have the right to any statements, and I want to point out to you that this amendment does not say that those statements have to be written. I don't know; it could include oral statements or transcriptions of oral statements. Now, we don't know exactly what this amendment means. We're right back in the same place we've been wallowing in all afternoon. This is a statutory matter, Mr. Pugh, who is knowledgeable in this area, got up here and told you that there are twelve or thirteen states that have discovery provisions; they've all got it in the statutes. The Jencks Act that he referred to, which is a federal discovery statute, it's not in the United States Constitution. Mr. Pugh told you, and I assume that he knows, that this amendment would go further than the Jencks Act; this amendment would go further than the federal discovery statute. Now, ladies and gentlemen, is that what you want to vote for today? I ask you, is that what you want to vote for? Let's not be setting up loopholes' dreams in the constitution. Now, Mr. Gravel, I must say, was in error when he said that we had not given the defendant the rights that he didn't have under the old constitution. I assure you there is nothing in the old constitution about advising a defendant of all of his legal rights when he is detained and we adopted that this morning. There is nothing in the old constitution about providing for an indigent defender system; we adopted that. I suppose that I say again that if you provide a constitutional right to counsel that's effective, you have done more than anything else you can do to insure the rights of a criminal defendant. It's possible to insure constitutional rights without tying the hands of law enforcement. Now, just take the transcription of grand jury testimony. I don't take my word for it. Read the last paragraph on page 6 of this PAR analysis. Now, here is an unbiased view. This is not the District Attorney's Association. They say that the right of an accused to obtain a transcript of testimony of witnesses in his case would also hamper the grand jury by frightening away witnesses who might have some of the information going on in the case, but would be intimidated by the knowledge that their words could become available to the defense. This increases the possibility of increased danger for witnesses testifying in such cases as those involving organized crime where the possibility of reprisals against themselves and their families could be great. Now, ladies and gentlemen, it's not just organized crime, I hate to get overly dramatic, but I don't know how I can overly dramatize the problems that you'd be setting up here by an indiscriminate provision like this without statutory safeguards. Everybody is talking about cases that they've seen. I tried a simple rape prosecution and the victim was a black girl who had an I.Q. of 100, the one who is mentally retarded, by the testimony of the psychologist. There were ten assailants involved. They were attempting, the codefendants were attempting, to intimidate witnesses out in the hall at the courthouse. What do you think they would have done if they would have had the statements of each and every person as given to the grand jury before the case ever came to trial? Let's be reasonable about this thing; let's think a little bit before we vote. Now, all of this thing has been discussed as though we were talking about a game, and we're not talking about a game. We're talking about a process which in the end is supposed to free the innocent and convict the guilty, let's hope.

Further Discussion

Mr. Segura Mr. Chairman, fellow delegates, I'm not going to say very much, so please listen to me. It seems like on most of these matters in this

presenting the district attorneys. We have a lot of people who are on the sides of the defense

attorneys, and they are all interested in putting things into this constitution that will help them win their case. The title of this section is "Fair Trial." This is all we should think about right now. It's not important who wins or loses; it's important if this man gets a fair trial. I've been mugged on the street. I have a crooked finger because I've been shot through the finger. The guilty ones were never caught and were never prosecuted. But had someone been caught, I couldn't sleep at night if I would think that a guilty man had been convicted and deprived of the two things, either his life or his happiness, by being sent to prison or being condemned to death. Let's give them a fair trial. It seems to me--now, I'm not an attorney and I can't read those words and have one word to mean something else like these attorneys seem to be able to twist everything around--but it seems like if you can give somebody some information that will help prove an innocent man innocent, and if the man is guilty, hiding some of this information I don't think will hurt. Thank you.

DISCUSSION

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, let us remind ourselves that this is the Bill of Rights with the rights that we have at the present time. I rise in support of this Gravel amendment. I do it because power is easily abused, and justice has often been elusive in our judicial system. I think this is a provision which will guarantee justice to many persons. Our system of government is based on checks and balances. Our forefathers gave to us this provision, not because they felt that all men are good, but rather because they recognized that there is a selfishness and that because this is true of our human nature. There needs to be some check and some balance. So, we see this provision throughout our form of government. Now, this provision that we have before us, I think, I think it provides the balance for justice that we need to consider. The opening sentence of the section states the basic principle. "Every person charged with a crime shall be presumed innocent until proven guilty," and to provide him with this information of which he is going to be tried does give to him information which, in many cases, will give to him his innocence. I submit to you that this is a high moment in the life of this convention, for here, we are considering a basic principle which can give justice to those who have been accused. A few moments ago, Mr. E. J. Landry came and said to me, he said, "This is the most basic human right," and he said, "I would like for you to go and speak in favor of this amendment." Before Mr. Landry, who is one of the most highly respected members of this convention, came to me and asked this of me, I had already decided that I would do so. I think he did it because he felt that in some way I symbolized and represent our Judeo-Christian faith which gives to us a basic belief in man's dignity and in our basic human rights. What I feel is that many of you have been very adequate spokesmen of our Judeo-Christian faith in the excellent way in which you have spoken in favor of maintaining and extending man's... our basic faith in man's human rights and in man's dignity. I say to you that one greater to any of us said, "You shall know the truth, and the truth shall make you free." I submit to you that many innocent persons will probably be set free because they know the truth of that of which they are going to be tried, and they too might be set free because we give support to this amendment. Mr. Burson says, "This is statutory." Well, I submit to you that the legislature has not made it statutory, you and I are responsible individuals; the decision is now with us. I say let's take a chance on human rights and human dignity, and let's give support to this amendment. Thank you.

Further Discussion

Mr. Chairman and ladies and gentlemen, I haven't... I don't think I've been abusing the

privilege. But I think that this is important enough that I should make a few statements about it. This particular section regards fair trials. There is one thing that you have to decide with reference to criminal laws. First, I want to state this: I am not a criminal lawyer, I'm not connected with the D.A.'s office nor do I engage in criminal practice. So, therefore, I have no interests to tell you about in this particular case or any trials that I have engaged in except that I'm interested in fairness and justice for our laws. There is one thing that I think that's more important. I think Mr. Segura brought that out when he says, "It's not a question of who wins or who loses." There is another question too, that we have to decide, that I hope that you will take into consideration. I have a firm belief that everybody who has been acquitted in a case is not always innocent. I have another belief that everybody who is in Angola is not guilty of the crime for which they were sent there. So, it comes down to this question, it depends upon how many innocent people you want to convict in order to be sure that you get the guilty one, or how many guilty ones you want to turn loose in order to be sure you do not convict innocent people, or let off too many innocent people or too many guilty people as in the case may be, that's what it amounts to. We are human beings and our courts make mistakes, our juries make mistakes just like anybody else, because we are dealing with human nature and the frailties of human nature. Now, I just want you to think about this. If you want to be sure that you give the innocent a fair trial, you'll vote for this amendment. That's the reason I rise here in support of it. If you want to be sure that you get the guilty and the few innocents too, then you can go ahead and vote against it because you are certainly going to convict a whole lot more innocent people without this provision than you will with it. It's a choice that's just like that. If you want to favor the innocent, let's give them a fair trial and give them the right to find out what kind of a right or evidence they have against him so he will know what he has to meet. You have read in papers, and I have, day in and day out, of cases where somebody has come up and found that they were turned loose because they found somebody else was guilty of the crime for which they were charged. If this is Bill of Rights, let's give the right to the person to know who his accusers are, and what they are going to try to say against him, so he can prove his innocence. I think it's fair that we support this amendment, and I ask your support of it.

Questions

Mr. Burson Senator, as a member of the State Legislature, would you be willing to investigate into and sponsor a proper criminal discovery statute?

Mr. De Blieux Yes, I would do that, Mr. Burson. I might say that, that under our present procedures we have, as you well know, that we have courts... There is no difficulty for a rich person to exercise his rights of discovery or than the D.A. already has all the facilities and investigators to do that. What this amendment will do, it will help and protect that poor person who does not have the chance to hire those investigator and they get out and discover this evidence.

Mr. Burson Don't you think that if you were to introduce such legislation in the State Legislature, that you could work it out and get it passed in an acceptable form?

Mr. De Blieux Well, I hope so. I don't know, but I hope so. I'm not a criminal lawyer, as I say, so I don't know what's good and right about that. All I know is the poor gets penalized.

Further Discussion

Mr. Jack Mr. Chairman and ladies and gentlemen, I rise in opposition to this amendment. I want to point out to you that a grand jury is not a trial

place for defendants and the prosecution. It's an investigative body. Now, since certain amendments have been defeated and all, there is two things left for grand jury to investigate where it has to start by them. They can investigate others, but to prosecute you'd have to have an indictment on a capital case or life sentence. Now, I'm a defense attorney, but let me tell you, I like to live, and I want my folks to live. Now, a lot of people, say there has been a hoodlum killing or a gang killing, or what kind of killing--those type of things. You are not going to have people volunteering to come to a grand jury if they know a transcript of that is going to be handed around to everybody. Now, I do think this amendment is very bad, but I do think that there should be some form of criminal discovery rules, which is a legislative matter. But I don't think you should be given a copy of the testimony before the grand jury. If you do that, you're going to have people not willing to volunteer and that's where you get people to help solve killings; lots of times they'll come forward on that. Now, by discovery, you could have rules set up in law. You've got them in civil cases where from the opposite side you can get a list of the names and addresses of witnesses known by the other side, where where were eye witnesses, whether they were present, whether you have written statements, and whether you talked to them, had investigators or what not. You can take it from there. Now, this... a lot of this ground has been gone over. About the only amendment that I can think of to be left to introduce here--and if anybody is going to introduce it, I think they ought to get it next and get it through--I've seen about every amendment to do with grand juries except to give the right to a defendant and/or his attorney to eject the district attorney from the grand jury room. That's how ridiculous some of this is getting, and I say, let's defeat this amendment, let's get along. The time is passing. We're not making the progress we should. Thank you.

[Previous Question ordered.]

Closing

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, let me just briefly, state, as clearly as I can, what I believe is absolutely wrong with the observations made by one or two of the delegates, and I believe an effort to either present this amendment in a different light than the way I presented it. I asked you to please carefully read the amendment and I ask you to do it again. What we are referring to in this amendment would be the statements of witnesses who appeared before any official, or employee of the state, or any of its political subdivisions, or any grand jury which participated in any investigation of the case for which the defendant is being prosecuted. Now, that's as clear, I believe, as anybody can put it, and anybody that suggests that there may be some far-flung statement that may have been made by somebody to somebody not concerned with the investigation is just not getting to the heart of what I hoped to do by this amendment. Now, what I am saying to you is that this language is clear and covers the rights of a person to know exactly the basis on which the prosecution is being conducted. Let me ask you to pause for one moment and think about this possibility. It may be you, it may be one of your loved ones, it may be one of your friends or acquaintances who gets to be the subject of an investigation conducted by the prosecution arms and fingers of the State of Louisiana. Now, don't you forget at all but that that investigation is being conducted with your tax money by the people that are employed by you--the taxpayers of the State of Louisiana--who are supposed to be acting, Mr. Perez, in the public interest. Let's keep that in mind. I suggest to you that when that function is being performed, it's being performed in the public interest and that when any definitive statements are developed or obtained in connection therewith, that they ought to be made available to a person presumed

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to be innocent that the state says it's going to prosecute for a criminal offense. I know that you can't get up here, no matter how strongly you feel about an issue, no matter how firm you are in your conviction and belief, and change the minds of some people who don't want to have their minds changed. I address all of my remarks to those of you who will look at this proposal dispassionately, clearly, and in good conscience and decide whether it's right and necessary to accord a fair trial to a defendant. I ask you to judge this proposal by that test, not by a suggestion that maybe a certain sheriff or a certain district attorney or somebody else doesn't like it because it may cause a hardship or may cause a problem, but by the overriding test of whether or not this is a good proposal for the benefit of a person presumed to be innocent, who must defend himself, and who does not have the forces and the facilities of the prosecution arms of state government in order to develop his defense. Ladies and gentlemen of this convention, does a defendant have an opportunity to exercise, exercise his right to a fair trial if there is going to be retained, hidden, or suppressed evidence that has been obtained that would help him establish his innocence, or even more importantly than that, that would present before the jury, summons to determine the rightness or the wrongness of his position or, whether or not the totality of the evidence justifies conviction or acquittal. At the very outset of our consideration, we considered a Preamble to a Bill of Rights. I thought then that we were talking about a Bill of Rights for the individuals as stated in the Preamble. What, ladies and gentlemen of this convention, did you mean when you said, by adopting the Preamble, that all government of right originates with the people, is founded on their will alone, and instituted to protect the rights of the individual? Are we protecting those rights when we do not afford to the individual a full statement and disclosure of the evidence that has been collected for and against him. Thank you very much, Mr. Chairman.

Amendment

Mr. Derbes. Amendment No. 1 [by Mr. Derbes]. On page 5, line 13, after the word "to" and before the words "in his own behalf," delete the words "take the stand" and insert in lieu thereof the word "testify".

Explanation

Mr. Derbes. Technical in nature with all due reference to Mr. Stinson on my left, "testify" is, I think, better phraseology and I urge the adoption.

Further Discussion

Mr. Stinson. In view of the fact that Mr. Derbes knows more than anyone else here, we have no objection to it.

Mr. Derbes. Thank you, Mr. Stinson.

Mr. Stinson. In view of the fact that apparently he is the learned member of the convention, we have no objection to it.

Announcements

[Adjournment to 9:00 o'clock a.m.]

44th Days Proceedings—September 8, 1973

Saturday, September 8, 1973

ROLL CALL

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PRAYER

Mrs. Brien Let us pray. Dear God our heavenly Father, let the light of Thy divine wisdom direct the deliberation of this convention and shine forth in all the proceedings and laws planned for our rule and government. Give us security to accept, give us serenity to accept what cannot be changed, courage to change what should be changed and wisdom to distinguish the one from the other. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Committee Proposal No. 25

Reading of the Section

Mr. Poynter "Section 16. Trial by Jury in Criminal Cases

Section 16. Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily.

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I guess the fox has' may have been an omen for what may happen again today. Let me explain what this particular section seeks to do. I'm going to get into some basics of what I think are constitutional law issues and then you can decide them for yourselves. If you believe that conviction beyond reasonable doubt means something more than just convicting, and I say to you that where one can be convicted and twenty-five percent of those who try him believe he is not guilty, then that is not beyond reasonable doubt. The first sentence of this section, of course, does nothing more than give to the accused the right to ask for a jury trial, if he may be sentenced to six months imprisonment or more. That's to track Duncan v. Louisiana, which was a United States Supreme Court case that held that whenever you have a fine or imprisonment which may impose six months or more, you are entitled to a jury trial. The second sentence "in cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons or more." Presently there is no statement in the constitution with respect to the number of jurors. We want to constitutionalize twelve persons in those cases necessarily punishable by hard labor. Now those are the cases, ladies and gentlemen, that involve twelve-man jury trials at this time and involve all cases where the judge must sentence to Angola, but of course may suspend it. There are things called relative felonies, like negligent homicide, where you may be sentenced to a term of imprisonment with or without hard labor. Those cases are presently tried by five-man juries. We do make a change here, in that we say that, of course in capital cases you must have unanimity in the jury twelve out of twelve to convict. In cases in which

no parole or probation is permitted, you must have twelve out of twelve. We are attempting to change the law there. Presently under the armed robbery statute, one may be convicted by nine out of twelve people, which is only seventy-five percent and in my judgment not beyond reasonable doubt and may be sentenced to as long as ninety-nine years in the state penitentiary without benefit of parole or probation. So in that type of case, and that's the only case presently that we have that the legislature says that no parole or probation will be permitted, then it would require twelve out of twelve to convict. In all other cases where there may be nine out of twelve to convict, we now provide ten out of twelve. Please give me your attention for just a moment on this issue. Louisiana and the State of Oregon are the only two states again in the whole United States and in the whole federal system that allows one to be convicted by nine out of twelve votes of a twelve-man jury. Ladies and gentlemen, nine out of twelve is three-fourths, three-fourths of a hundred is seventy-five. If a hundred of us here today are asked, did so and so do something beyond reasonable doubt and twenty-five out of a hundred say he did not, I submit to you, he has not been convicted beyond reasonable doubt as we appreciate the term. Now mind you, twelve are the only other state in the Union besides Oregon that permit that. All we seek to do here, you see, is to say in those cases where nine out of twelve may apply, that it be ten out of twelve. That's five-sixths, that's approximately sixteen and two-thirds percent instead of twenty-five percent. So that then you are making the formula, if you want to call it such and I hate to use figures that way, but at least then eighty-four percent or more of the jury would feel that you were guilty and could return a verdict that I believe would be beyond reasonable doubt. There are not many D.A.'s in my judgment who are opposed to this really on any philosophical basis because most of them get their convictions generally with unanimity. My point and the committee's point is that if the rest of the United States can require unanimous verdicts and the federal system can require unanimous verdicts, why can't we in Louisiana require at least five-sixths verdicts to convict? We provide, and I think that maybe we should have spelled it out a little more in detail, that in those cases not necessarily punishable at hard labor, that the verdict—the jury may consist of less than twelve and requires unanimity. In a five-man jury cases at this time, it requires five out of five to convict or acquit. I would not personally be upset to see that the same formula be applied with respect to a smaller jury size. That is, that we would reduce the jury to no less than six in certain cases and have five out of six convict or acquit. I think it would be logical and would make sense. Now, ladies and gentlemen, Robert Kennedy once said that, "The only people to whom justice is administered are poor." Or the poor are the ones that only get justice. He had a good point. Because if you check with any of the staff, you will find the statistics show that generally ugly, poor, illiterate and mostly minority groups are those people who are convicted by juries. Juries don't generally—that's particularly in murder cases—juries just generally don't convict nice-looking, intelligent, well-meaning, decent people like all you folks here in this convention. But remember that you represent maybe only .0003 of one percent of the people of this state. I urge you to accept the section. Let's not get off on any harum-scarum tactics. I've had enough of it, I've had to bring with me—let me show you a picture, this fellow here...

Mr. Roy Now even you got your picture in the paper, Mr. Roy, you...

Mr. Roy I'll show you a picture of a fellow who was killed in a park, in which he was found dead drunk lying on his back. Three years

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later after every benefit of doubt had been accorded to him the real culprit came up, a man with a prior record, and admitted his guilt. This man spent three years in a state penitentiary for something that he didn't do. How let's talk about statistics because I have had them coming out my ear, but not anything like what I've got from the St. Landry Parish Court. We have all the opinions from these assistant D.A.'s. Are we going to ruin the state with criminal jury trials? Well, let's look at particularly District 27, which is St. Landry Parish. I'm sorry Mr. Burson is not here this morning. I don't see him. He's here, good. Each criminal case per judge terminated in St. Landry Parish is 2.93 percent. Do you know how many trials, criminal jury trials, Mr. Burson and them had to go through? It says here, eight. Eight criminal jury trials in 1972 in St. Landry Parish according to the Supreme Court Judicial Administrative Statistics. The number of criminal cases disposed of by trial by judge was 618, you understand, 2.93 percent. Do those pleading guilty in St. Landry Parish, and that's the reason you don't have that many, was seventy-nine percent in 1972. Don't be mislead with harum-scarum tactics. In West Carroll Parish in 1971, one hundred percent of those charged pled guilty, one hundred percent, they didn't even try. My dad, he was a judge in St. Landry Parish, who raised case [again] about all what we were going to do they tried twelve little criminal jury trials in 1972 in Rapides Parish and they disposed of, by judge, 175 criminal cases and without trial in Rapides Parish they disposed of, each judge, 2,993. I said this because you have been getting these self-anointed statements about statistics that are so atrocious that you have to consider what "beyond reasonable doubt" means. If it means to you, that it takes only seventy-five percent to send a man to Angola or anywhere else for ninety-nine years for any case except you understand capital crimes, what you may convict with only nine out of twelve - if that's what you want to do then it is. But I don't want to tell you weren't told. Let's not argue about ten out of twelve being too much to ask for.

Mr. Durns Mr. Roy, what disturbs me in this section, it provides that in cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons without designating the number. It could be a jury of two or three...

11. The Board found that the "right" was not a property interest under the Fifth Amendment. The Board found that the right was not a property interest because it was not a right that the government had a duty to protect. The Board found that the right was not a property interest because it was not a right that the government had a duty to protect.

Mr. Stagg. Chris, are there any words that you or your committee could suggest to replace the words "voir dire" in the bottom line of this article or the Latin term "voir dire." Can you not give a committee amendment that could be instantly acceptable to this body? I don't like trial de novo. I don't like voting viva voce. I don't like voir dire because the constitution we promised the people in our district would be easily understood and readable by every citizen without difficulty.

in there, you are violating Stage's rule of Style

put interrogate, I guess.

11 I'm going over here and prepare an
12 amendment. I want it to be with the committee
13 session, and I need your help.

Mr. Roy: It's alright if you can change "voir dire" probably to "interrogate" and get a better word. I think you'll have...

Mr. Stagg Beautiful. I'll do it. I would do it with unanimous consent, but I don't think the Chair would accept that.

Mr. Munson Mr. Roy, Mr. Stang asked one of my questions because I didn't know how to pronounce those two words, much less know that they meant. Would you explain to me again what they mean?

Roy: "Well, I mean, it's a real common term in the trial world. It means to literally question someone. I mean, I hear the responses between you and the prospective juror, so that you can maybe determine any prejudice for which you would want to challenge him. You know just for peremptory, just say "I don't want you because he kind of snickered when he answered or something." It's literally to view and see.

Mr. Munson: The other thing, I believe you said that in Mr. Burton's parish they had tried eight capital cases last year.

not eight capital cases--eight
capital cases.

Mr. Tolson: Eight criminal cases?

Mr. [redacted] preside eight criminal cases before
[redacted] [redacted] [redacted]

Mr. Munson: ... he has told us about one of those three times. Is that case listed more than once in those eight?

[illegible]

Mr. Justice Roy, do you know that the statistics become an assistant district attorney until the statistics are from 1972? Do you know that the statistics are from 1972? Do you know this spring? But seriously, isn't it true that the United States Supreme Court last year in the case of State v. Johnson was confronted with the Louisiana Constitutional Provision permitting the jury nine out of twelve to return a guilty verdict in other than capital cases was, in fact, guilty of a constitutional violation? Do you know the Supreme Court uphold this as constitutional?

Mr. Roy Mr. Burson, I never lie about facts, you're correct. But my point is that it does not amount to beyond reasonable doubt in my mind.

Mr. Roy Well, it certainly is and I'm the delegate here, and I'm not in the U. S. Supreme Court. I want to say that I think there will probably be a lot more criminal trials in St. Landry Parish since Mr. Burson is there.

giving the deletion of the requirement of unanimous twelve-man verdicts in cases in which no parole or probation is permitted. Is that correct?

Mr. Roy: Waiter, I would think that maybe somebody did say, it might have been Jondy, I just don't remember. I don't think we had any trouble on the vote. I really can't answer you. I'm not trying to dodge it, because I don't want

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Mr. Lanier Did your committee have a rule that it took three to file a minority report?

Mr. Roy We later dropped that rule and let it go by with just anybody...

[Action on Section 16 deferred.]

Reading of the Section

Mr. Poynter "Section 17. Right to Bail

Section 17. Excessive bail shall not be required. Before and during a trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption is great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is less than five years, and the judge may grant bail if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years and the judge may grant bail if the sentence actually imposed is greater."

Explanation

Mr. Stinson Mr. Chairman, members of the convention, this is a very important section of our Bill of Rights and that is the fact of bail. Now as we have repeated a number of times, everyone is presumed to be innocent until proven guilty. Therefore, the premise that we got to operate on is that a person who is presumed innocent should not be imprisoned unless he has been proven guilty and that is after a trial. Of course, in cases within the discretion of the courts where it's a dangerous person involved in a dangerous crime there are prohibitions against that. But I would like to read from this and I will point out as I go through the changes from the present law, there are very few changes from our present provisions of the Constitution of 1921 "Excessive bail shall not be required (that's a repeat, I save that). Before and during a trial a person shall be bailable by sufficient sureties unless charged with a capital offense (that's the present law) and the proof is evident and the presumption is great (that's a re-statement of our present law, and I know of no objection, it was done before our committee or on our committee, and I have heard none from anyone in this convention). It says, 'after conviction and before sentencing', those of you who are not lawyers may not appreciate the meaning of this. That means that you are convicted, you can ask that your client be remanded for sentence for two or three or four weeks, whatever a judge decides. Now if a man has been out on bond and it only seems logical for him to continue on bond until he is sentenced as to some term or given a suspended sentence or whatever it may be. At the present time, automatically he is entitled to be continued on bond, if his sentence that can be imposed is less than five years. Now we added it says, 'the judge may grant if the maximum sentence is to be served is greater.' The judge has the discretion and judges usually in arriving at that decision as to whether you will be continued on bond usually refers to the sheriff's department or the district attorney or someone as to whether this person is the type that will not be dangerous to be continued on bond. Now our judges in my district, and I've checked with Judge Dennis, our judges have repeatedly said that they wish the law would allow them this permissive discretion in this case, but it's prohibited. I know of no objection our judges--I checked with them last week--all three of them urged it. Judge Dennis says the judges' explanation is in favor of it when it's within their discretion. So we would like to continue that, to add this to it. Now, also, 'after sentencing', that's after you go up and the judge sentences you 'and until final judgment.' Now that means if the person wants to take an appeal or if there is going to be a presentence investigation and pleas of guilty or convictions, the same thing, it automatically--under the present law he can get out on bail or bond if it's less

than five years, and over five years, it's discretionary with the judge. Judge Dennis advises me that these judges' associations have never taken a position on this; he knows of no opposition and there is no opposition from Judge Dennis. Now the reason for this last permissive continuation on bond is this, after the judge sentences him often-times, especially with first offenders,...

Mr. Chairman, I'll make it short. I hope the inner tension is the fact that there is no objection to this last provision, it's especially important and in most cases that I've handled and other lawyers, it's some young person who is still in high school. He is charged with something and we know, because he hasn't been in any trouble, that the judge is going to give him a suspended sentence. But the judge has to ask, usually ask, for a presentence investigation by the probation department and it's so clouded with that type of work it usually takes, more than likely, about six weeks. If this is a young boy, man or woman who is still in high school or in college and they have to now--been out on bond all of this time--under the present law, they have to go to jail for six weeks. At the end of the six weeks when they get a clean bill on their record, the judge says 'you now are given one year suspended sentence, one year probation.' They have served six months in jail with hardened criminals--our parish jails can't separate like we try to at Angola--they have lost out one year's schooling because they've missed six weeks of schooling. It is a blight on them, the fact that they have served in jail. This applies more to the young people than most anyone. This says that the judge again, at his discretion, can continue them on the same bond until he decides whether it's going to be a suspended sentence or not. Now I'll say this, a man is not any more guilty or harmful after he is convicted than he is before if you have the same bond, you're doing I think our people really a justice and not an injustice to pass this--entirely within the discretion of the judge, you can't force him to, the judge himself says you shall continue on bond or you have to go to jail. I would like to urge the adoption of this. I think it's fair to everyone. Certainly after a young person has gone astray and realizes where he has gone wrong, he's not given an extra penalty if he is going to try and straighten up and become a good citizen.

If there're any questions, I'll be happy to try and answer them.

Questions

Mr. Burns Mr. Stinson, I'm not against this section but there is one thing that does concern me a little, as to whether or not there should be some provision put in here--I'm just suggesting this--to exempting a person with a long criminal record from this discretion on the part of a judge. I thoroughly agree with you in the case of a first offender who may have temporarily...but, for a confirmed criminal. It's been my experience in twenty-four years as district attorney that a sorrier a man is the more people he can get to help him. I'm just afraid that some judges might be influenced by that constant knocking on their front door and give a person of that type, bail just to go out and commit another crime.

Mr. Stinson Well, Mr. Burns, of course as I've explained, we are placing the faith in our judiciary. It may be some judges you say--I have no objection, I'm not trying to keep a confirmed criminal out on bond...if you have any amendment, I would not have any objection. I would like to also point out that this is a matter that, while a member of the legislature, I have worked on for years with Dr. Dale Bennett from L.S.U. Law School. He recommends this. He is in favor of this. I think through him the Law Institute, I believe, also is in favor of this type of discretionary with the judge. Of course now as Mr. Burns says, you may have some judge that wants to let them out anyway, but frankly, there are some judges that

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insert in lieu thereof the following:

"Section 16. Criminal cases in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict in cases in which the punishment is necessarily confinement at hard labor, render a verdict. Cases in which the punishment is necessarily confinement at hard labor; shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict.

Cases in which the punishment may be confinement at hard labor; or confinement without hard labor of more than six months shall be tried before a jury of six persons, five of whom must concur to render a verdict. In capital cases, the defendant may knowingly and intelligently waive his right to a trial by jury.

In all criminal prosecutions tried by a jury, the accused shall have the right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law."

Explanation

Mr. Lanier Mr. Chairman and fellow delegates, this amendment is the result of a synthesis of ideas by various of the proponents and opponents of different shades of the way this thing should be handled. I'm authorized to state that this is another proposal upon which Delegates Gravel and Burson are in agreement. That seemed to be quite successful on the past proposal, so I'd like to bring that to your attention on this one.

This amendment makes three changes in the present law and four changes in the present constitution. And I want to explain to you the differences here.

The present law, in our constitution which is Article VII, Section 41, and also, in Article 782 of the Code of Criminal Procedure, provides that in cases not necessarily punishable at hard labor the jury shall be composed of twelve persons, nine of whom must concur to render a verdict.

We have changed this to ten. This proposal of having less than a majority to reach a verdict in the case has been approved by the United States Supreme Court; this issue of whether you need a unanimous verdict. In all cases has been reviewed by the Supreme Court and they have said less than a unanimous verdict. It then becomes a question of degree...at what point do you draw the line? Do you draw it at eight, or nine, or ten...we felt, after putting all of our heads together, that ten was a reasonable amount on this. It leads to a situation where you'll get a definitive action in more cases rather than have a hung jury. Because if it required twelve out of twelve to render a verdict, that means if you had anything less than twelve out of twelve, either for innocence or for guilt, you would have what's called a hung jury, and that means that you would have to go back and do it all over again. And this is one of the modernizations of our criminal procedure, quite radically, of which Louisiana is one of the leaders in the field.

The second change in the present law in the present constitution is providing for the so-called bottled jury of six persons rather than five.

Under the present law with a relative felony is one in which the punishment may be confinement at hard labor, but it is not necessarily confinement at hard labor. In other words the judge could impose parish jail time, or he could impose penitentiary time. It's within his discretion. It is not mandatory penitentiary. Or in cases of serious misdemeanors...these are misdemeanors where the punishment is greater than six months or the fine more than five hundred dollars.

The present law is that you have a five man jury all of whom must concur in order to render a verdict. This is also Article VII, Section 41 of our present constitution and Article 779 of the Code of Criminal Procedure. We have provided that the bottled jury shall be composed of six persons, five of whom must concur in order to render a verdict. And the rationale of the five out of six is the same for the ten out of twelve.

The issue of whether or not you can have less than a twelve man jury has been passed upon by the United States Supreme Court, and this is in accordance with law.

The next change is with reference to the waiver of your right to trial by jury. Under the present law you can waive your right to trial by jury in cases which are neither capital nor necessarily punishable by imprisonment at hard labor. This is Article 780 of the Code of Criminal Procedure. We have changed this to provide that you may waive in an absolute felony, that is a case that is necessarily punishable by imprisonment at hard labor in the penitentiary. Of course in a capital case you do not wish to allow a defendant to waive because that would than mean that one man, the judge, would have to make the decision of guilt or innocence and life and death for the defendant. And quite frankly, we feel that this would be a very bad social policy, and should not be adopted in this state and is not adopted in most states. You would almost be allowing a man to commit judicial suicide in front of the judge without a jury.

However, in other cases that are not capital actually this will probably facilitate the administration of justice, because a trial in front of a judge is generally much swifter and not as bound with technicalities as a trial in front of the jury. And the defendant would have the option in his discretion to intelligently waive this particular right.

Now, the other change, and it's not a change in the law but it is a change in the constitution, is the...providing that in a jury trial, the accused shall have the right to full voir dire examination of prospective jurors. This particular subject has very recently received extensive litigation in our Louisiana Supreme Court. It is my understanding that this is the present law. At the present time, the voir dire is provided for in Article 786 of the Code of Criminal Procedure. We felt that it would be advisable to include the existing jurisprudence into the constitution so that this will be absolutely clear as to what your rights are at the trial of a jury case.

Now, at this time it's my understanding that there are quite a few delegates who would like to join in sponsoring this amendment. If I am right, I have been advised by the chairman of the committee that the committee has no objection to the amendment. I'd like to ask that Chair if we would be permitted to open the board to allow cosponsors.

[... continued debate continues ...]

Questions

Mr. Champagne Mr. Lanier, are you aware that I'm fully in favor of your proposal because it sounds like good constitutional law, but even if I didn't know anything about it, it has the only two words in French that I don't know in the constitution. And I will be able to tell my many constituents and good friends that Bubba Henry voted for it and I did, and this is acknowledging the French tradition in Louisiana.

Mr. Lanier Mr. Champagne, in answer to your question when this issue was brought up by Mr. Stagg, I consulted with my fellow delegates from Lafourche Parish, Mr. Landry and Mr. Bollinger, and it was our feeling that this language would be perfectly understandable in our parish.

Mr. Alexander Mr. Lanier, I notice in the sense of "knowingly and intelligently waive" that can you explain how would a functional illiterate knowingly waive, when he may not know what the word "waive" means? How would you handle that kind of case?

Mr. Lanier Well, I'm going to tell you. Of course, this would ultimately have to be decided by the judge as to whether this man was capable

he could not, of course, the judge would not accept his waiver. But of course he would be entitled to counsel. I happen to know some people who are not literate, but just because they are not literate does not mean they are not intelligent. In fact they are quite intelligent and I am sure you will also agree, on the other hand, sometimes you have some educated people that might not be as intelligent as the illiterate when it comes to intelligence. So there is a difference between education and knowledge, I believe, or native intelligence. This would have to be a judgment call that would be made by the judge in any case.

Mr. Chehardy Mr. Lanier, you have sixty-six coauthors. Why don't you call for the question and get the vote on the issue?

Mr. Lanier Well, I was thinking, Mr. Chenarday, that if we wanted to fully explore this and debate it...

Mr. Chehardy Well, when you've got sixty-six, that means they understand. Otherwise they wouldn't be coauthors. Why don't you get it over with?

Mr. Lanier O.K. I move the previous question.

the Section. Section passed: 104-3.
Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 18. Right to Humane Treatment"

Section 18. No person shall be subjected to euthanasia, torture, or cruel, unusual or excessive punishments or treatments, and full rights shall be restored by termination of state or federal supervision for any offense.

Explanation

Mr. Weiss Mr. Chairman, fellow delegates, the right to humane treatment is a very important section of the Bill of Rights. It is interesting how quickly we forget. The American colonists were drawn and quartered, were punished by being placed in stocks, were nearly drowned in dunking chairs. So there was no question that they would in the Bill of Rights include the statement in the Amendment 8 to our constitution, the Federal Constitution, excessive bail shall not be required nor excessive fines imposed nor cruel or unusual punishments inflicted.

Only yesterday morning on the Today show in Joliet, Illinois, I'm sure many of you saw the prisoners that were in revolt. It's interesting that our neighboring state of Illinois, which has such a constitution that was accepted by the people, does not have this statement, the right to humane treatment; whether this would have influenced the guards or others who have punished these prisoners by unusual treatments, I do not know. But certainly we, in Louisiana, have a tradition of being humane and understanding to our brethren and to our fellow citizens.

It seems that every generation has its tyrants, and there is no reason to think that cruel and unusual punishments will not be their allies and companions in the future as they are today and as they have been for centuries. It is for that reason this committee recommends that this section be adopted as presented, because of the fact that we have streamlined the old Louisiana sections, constitutional sections, namely Article 1, Section 11 and 12, and Article VIII, Section 8. Article XI and XII of the old constitution is concerned with confessions and reads as follows, "No

treatment designated"...or "designed", rather, "by effect on body or mind to compel confessions of crime." Section XII reads, "Nor excessive fines imposed nor cruel or unusual punishments inflicted," and this, of course, parallels the United States Supreme Court.

There are two new sections that are added. One is the matter of euthanasia, and this I think can best be described by another party who I'll call upon in a moment, and we'll skip this for the moment, but secondly, the "full rights to be restored." The last phrase reads, "full rights to be restored by termination of state or federal supervision for an offense," and refers to Article VIII, Section 6 of our present constitution. Here it is to be noted that on federal offenses there is no punishment as regards removal, that is for felony and an individual being placed in a federal penitentiary; that when they have served their time, they may return to life...to civilian life and assume their rights, including that of the right to vote. In Louisiana, that is not now the case. As a result, the governor has to pardon, and this issue of pardons has come up before us in the past, has to pardon an individual who has served his time for punishments...served completely his time. But still does not and has not the right to vote. It is for this reason that we have recommended full rights be restored to those who have served their sentence and who have terminated their supervision for any offense. And so we recommend to you that these two new sections be adopted, that is the portion concerned with full rights being restored to individuals having served their terms for any offense.

And secondly, I call upon Mrs. Brien who would like to comment to you briefly on the matter of euthanasia, which has already been commented in a letter to you by Dr. Brian of the Louisiana State Medical Society, and Mrs. Brien who has had some personal knowledge in this regard I think can explain this better than I.

Further Discussion

Mrs. Brien Mr. Chairman, delegates, I come before you to speak a few words in support of this section. Especially, I ask you not to remove the word "euthanasia" from this section.

Euthanasia means "good dead." But I think you all agree with me, we wouldn't push anyone into death. Believe me, I remember what happened in Nazi Germany. They were saying, "What is useful is good." German medicine sent two hundred seventy-five thousand so-called unworthy Germans to death. The extremes of the utilitarian mentality rampaging today through medicine, the drug industry and government will be checked by our press, lawmakers and doctors, lawyers and clergymen holding to their traditional ethics. The Germans wasn't blessed that way. So please, don't let it happen here in our great state what happened in Germany.

I ask you please to accept the committee proposal and don't delete euthanasia.

Questions

Mr. Roy Mr. Brien, this is a friendly question. Are you aware of the fact that in the state of Florida only last year or two years ago, the "euthanasia" bill was killed in the legislature in Florida?

Mrs. Brien Yes, sir, I read that but I hope it stays in this section.

Mr. Roy I think there shall be any constitution that there never shall be any euthanasia in this state, the legislature may

Yes, sir, I read that.

Mr. J. M. Brien, you said something about the fact that the state of Florida had a bill that was killed in the legislature in Florida.

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they came after the Communist and I did not protest because I was not a Communist, then they came after the trade unionist and I did not protest, because I was not a trade unionist..."

Mrs. Brien I don't understand you good, Roy, you'll have to talk louder.

Mr. Derbes I just address this question to any member of the committee who can answer it. What is unusual treatments? What is unusual treatments?... I don't know.

Mrs. Brien Mr. Weiss will answer your question.

Mr. Weiss This is a good question, and the word is new in this section. There have been some questions raised and I think it has been the opinion of the majority of the committee that the word "treatments" might best be deleted, and an amendment is...

Mr. Derbes Do you administer unusual treatments at your office, Doctor?

Mr. Weiss Yes, and that's right. And it's necessary to delete that word, and an amendment is forthcoming in that regard.
I appreciate that suggestion.

Mr. Willis Dr. Weiss, I'm loath to find fault, and I may be at fault, but why was the word "rights," and "full rights be restored" instead of "full citizenship be restored." Why was that used?

Mr. Weiss Well, it was the intent of the committee, both in answer to the previous question, that treatments, unusual treatments to extract statements to the contrary, that the individual may feel as a treatment was intent there...

Mr. Willis I'm not talking about treatment, I'm talking about full rights be restored.

Mr. Weiss The same goes true for the rights: The committee was under the impression that all rights, as determined by the declaration of rights should be restored in a humane attitude to those people who have served their time and punishment. In other words, if they have been punished adequately, have met the...

Mr. Willis I understand, I understand. My only quibble is with the use of the word "full rights" in lieu of "citizenship." Does not citizenship adumbrate all rights that you talk about in the Bill of Rights? And would not citizenship be a more appropriate word.

Mr. Weiss You're right, sir. I know I'm not an artist in words, but my understanding is that citizenship and rights are equivalent. There may be some difference.

Mr. Willis My next question, you use the word "excessive punishments." Would that not allow me to appeal and have the judge review a sentence on the grounds that the sentence is excessive and so the punishment excessive?

Mr. Weiss Yes, but it was not the intent of the committee to question this aspect, but rather "excessive punishments"...

Mr. Willis But the prospect is present, is it not?

Mr. Weiss Yes, and here again an amendment is forthcoming in this regard.

[Quorum Call: ~~Mr. Poynter~~ present and a quorum.]

Mr. Weiss Delegate Willis, your point is well taken. Believe me, it was the intent of the committee not to create any confusion although, apparently it has in this regard, and there are

amendments forthcoming in answer to your question. The point being in the light... in the eyes of the committee, that excessive punishments might be questioned at one time, and if Mr. Roy would like to answer that, I'd be happy to have him answer.

Mr. Willis Now, I am loathe to any form of immoral killing. And I note that the word "euthanasia" is used, and the words "guillotine, hanging, abortion, electrocution," are not used. Why should a person be not subjected to euthanasia and be subjected to the guillotine, or hanging, or abortion or electrocution?

Mr. Weiss I think that legally this has been well established that this is a type of cruel and unusual punishment in this country. Even today, capital punishment is being questioned by the federal courts as to being cruel and unusual.

Euthanasia is not in the same category in that it is a type of treatment; a physician must render this type of murder. And this mercy killing, as it is called, is the obligation placed upon physicians, primarily as a result of state action. And, therefore, this is a monumental step, I think, in stopping this type of killing.

[Rules Suspended to allow Committee on Local and Parochial Affairs to convene.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denney], on page 6, line 10, delete line 10 in its entirety and at the beginning of line 11, delete the word and punctuation "treatments," and insert in lieu thereof the following: "torture, or cruel (and a change here), insert the word 'excessive,' or unusual punishment," "torture, or cruel, excessive or unusual punishment."

Explanation

Mr. Denney The purpose of this amendment is to remove only the words "or treatments" at the end of line 10 and at the beginning of line 11. The reason for this is that we're talking about euthanasia in the first line, and then we talk about treatments down here. Frankly, I wouldn't be here had it not been for some very unusual medical treatments, and I don't want to take the risk that the legislature may bar doctors from unusual treatments. The committee advises that they have no objection to that. The balance of it would remain the same except that I've switched the words "unusual" and "excessive" which means nothing.

[Amendment adopted by a vote of 10 yeas and 0 nays.]

Amendment

Mr. Poynter Amendment sent up by Delegate Zervigon.

Amendment No. 1, on page 6, line 9, immediately after the word "to" delete the remainder of the line.

Explanation

Mrs. Zervigon Ladies and gentlemen of the convention, mine was one of the amendments Mr. Denney was complaining about that was prepared late, and that's because it takes a little bit of nerve to get up here and move to take out a word that many of us believe doesn't belong in the constitution. My main reason for moving to have this word deleted from this section is that I'm not at all sure what it means. It seems to me that murder is already a crime in this state. Any doctor that would shoot somebody full of a medicine that he or she didn't need, give extra sleeping medication, strangle her with a cord because he thought she was on her last legs anyway, would be liable to be charged with murder. What scares me to death about this word "euthanasia" is that a doctor following his

conscience who doesn't put someone in an iron lung or doesn't perform some sort of surgery that has a ninety percent chance of failure but might succeed, in his professional judgment if he didn't think that it would be useful, would be liable to a charge of euthanasia in the courts, because nobody really knows what it means. I wouldn't get up here unless I felt very, very strongly on this subject, and I'll tell you why. When my grandmother died, she was eighty-seven years old. She's been a widow for seventeen years. Up to a month before her death she was beautiful to look at. She always wore bright colors, wouldn't wear blue or dark blue, but she was a very young lady. She had always said to us when we were growing up, "look, if I get sick, lock me in the garage. I don't want to be any trouble to anybody." But she was in the hospital for a month, and she said to her doctor, "Doctor, I've had a long, full life. I'm dying of cancer, and everybody knows it. Please don't prolong my life. Don't put those tubes down my nose. Let me keep my little bit of vanity to the end of my life." And she said it so movingly that he acceded to her wishes. Under this provision with no definition attached, would that man have been guilty of euthanasia? I had another friend, a woman who was also dying horribly of cancer as her sister had died five years earlier, and she said to her doctor, "I want the world to know what causes cancer. Do any kind of test you think you need to do to find out the causes and the possible cures for cancer. I'm dying anyway. Do whatever you think would be useful to you." Would that doctor, following her wishes, have been guilty of euthanasia? I don't know. He wasn't guilty of murder, that's for sure. Let's keep murder as a crime and let's not put this word euthanasia in there. There isn't anybody here that wants old people slaughtered wholesale. Nobody here wants that. Legislators don't want that. Some of them are old themselves. I'll point out. Please let's make that out, and let's don't get carried away by emotions. Let's be certain exactly what we're doing here today. I'll yield to any questions.

Further Discussion

Mr. Roy Yes, I certainly will be, Mr. Chairman, and I want to say let's not get carried away with emotions and understand that what we're saying here is that the state may never pass a law through the legislature which allows some other person or some other people to say that you are going to be allowed to die, or you are going to be put to death. That's very simple. I don't know about Mary's issue, but there is nothing in this section that would prevent the person who's ill from stating in writing to a physician or anyone else that "you will not treat me, you will not administer certain things to me," and that is not prohibited at all. If a person chooses not to undergo treatment, he has that absolute right. All we're trying to say is that never, never will the legislature of this state say that some other person or persons may decide that you will be put to death or allowed to die without your permission. Now, euthanasia as the staff points out is very well-defined in Webster's New Collegiate Dictionary as "the act or practice of killing individuals that are hopelessly sick or injured, for reasons of mercy." The act or practice of killing, not, not the opportunity or the right of a person injured or dying to say, "Don't treat me." It doesn't say that. Now, there's no question but that in my judgment this is needed. Florida had an act introduced to allow euthanasia. I don't see under any circumstance—I don't want anyone ever determining, no matter how sick I am, except me, that anybody can say two out of three in my family, three out of four plus the doctor, that I should be put to death. I urge the rejection of this amendment. Thank you.

Questions

Mr. Fontenot Mr. Roy, I'm not exactly sure... I listened to your definition of "euthanasia." Would abortion come into this thing at all, or was it the intent of the committee to say anything about abortion at all, or are we just concerned about mercy killings?

Mr. Roy Mr., we are talking about individuals who are put to death through some state conduct, and it doesn't address itself to abortion.

Mr. Fontenot You don't consider a fetus, ~~an~~ an embryo, or anything a person... subject to mercy killings.

Mr. Roy Mr. Fontenot, if ever the courts decided that a seven month old fetus is an individual, then it would apply, and I think it should, but... abortion, I just can't answer that.

Mr. Abraham This is a friendly question, but I need an explanation, Chris. Now, you said that this does not prevent a person from requesting a doctor to do something to them, this type of thing, but the language as it states here now says, "No person shall be subjected to it," regardless of whether they want it or not, and I would ask you, does this language actually say what you intended for it to mean?

Mr. Roy Yes, it does. It means that the legislature may not subject, but, Mack, you have to understand that a Bill of Rights is designed to prevent state action and not to stop an individual from yielding, "I don't want certain treatment." I'll yield to any other questions.

Mr. Chehardy Chris, now I have a very serious problem on this issue. Now on euthanasia, in my particular case, I'm opposed to it. I'm opposed to it principally on religious grounds. I'm a Catholic; we're against it. Now, we're making it, but you know things are subject to change like we've discussed. What about the problem all of us, of all of the deceased Catholics who ate meat on Friday and went to hell, and now they're sitting up there watching us eat meat on Friday. So, there could be a change in the precepts of my religion which would make me accept euthanasia. It is something that you really should put in the constitution as a permanent thing? I'm throwing that out for your consideration. Eddie D'Gerolamo raised the issue with me, and I thought it was good to raise it for everybody else.

Mr. Roy Lawrence, I'm a Catholic, and I don't see it as a religious principle necessarily. I see it as a personal, philosophical one that no state law should ever be passed. Now, if it ever comes to that time we think we should have euthanasia...

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I think this is a very serious subject. I can hardly think of many more serious subjects that we'll consider, and I think that it's important that we reconsider Mrs. Zervigon's remarks because I think that she doesn't understand this whole proposition. I think she's made an analytical mistake. There's no way that anyone can be charged with euthanasia. That's not the way the law works. Right now under present law if you commit murder, or manslaughter, or negligent homicide, you are charged with those offenses. If a law on euthanasia were passed through the legislature, it would make an exception to our murder, negligent homicide, or manslaughter laws. It would say that under certain circumstances, the killing of another human being is not murder, manslaughter, or negligent homicide. No one will ever be charged with euthanasia because that's not a crime under any criminal statute ever passed or considered. Euthanasia laws make an exception to our murder laws. Now what this provision does is one thing.

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It keeps our law like it is now. It says that you can not in the future have a law passed through the legislature making an exception to our murder, negligent homicide, or manslaughter laws to permit the killing of another human being intentionally. Now, there are several instances where killing of another human being is prohibited under law. If it's an intentional killing, if it's negligent killing, a euthanasia law makes an exception to that. We want to prohibit such laws in the committee proposal. Laws which make exception to our murder, manslaughter, or negligent homicide laws. A law, if passed through our legislature, will not prohibit euthanasia, so no one would be charged with it. A law passed through will permit euthanasia. It's a great conceptual difference. There's no crime of euthanasia. You can't be charged with it. You can only be charged as now with murder. Now it was said that we have laws against murder and negligent homicide now, manslaughter now. That's true. We want to keep it that way, and that's all this does. It keeps the law as it is now, and it makes sure that exceptions can't be made in the future. It's very simple and clear. So I urge the defeat of this amendment.

Questions

Mr. Lanier Mr. Jenkins, you say that putting this in the constitution keeps the law as it is right now. Would you please give me the citation of where I can find this thing about euthanasia in either the constitution or statutory law?

Mr. Jenkins The law right now in Article 30 of the Criminal Code prohibits this type of criminal activity, namely the intentional killing of another human being. That's the law now.

Mr. Lanier Let me ask you this. Under the law, is not a child viable at the age of six months?

Mr. Jenkins Well, I don't know what particular law says that. There may be some law that says that.

Mr. Lanier At what point in time does a child become a person in the contemplation of the law? Right, an embryo, when does it become a person in the contemplation of the law? When does it become viable?

Mr. Jenkins Well, it varies in different areas of the law depending on the law you're talking about. It may be one sense in the case of abortion. It may be others in the case of inheritance. It may vary from state to state as well.

Mr. Lanier Well, what I'm getting to is suppose you get into a circumstance where it is necessary to either kill the mother to save the child or kill the child to save the mother. What would that be?

Mr. Jenkins In those circumstances if you need to kill one or the other, in some cases it is abortion under our law. In other cases it is not, depending on the definitions...

Mr. Brown Mr. Jenkins, I read in the newspaper about a week ago about something that happened down in Florida where a young boy was in an automobile accident I believe, and seven or eight doctors were called in and said, "look, his brain is dead; there is no response in his brain." But a machine pumped air into his lungs that kept his heart going; so by use of the machine the heart functioned and there was breath coming and going, but the conclusion that I read was very conclusive. The brain was dead and that only the machine was keeping this function going. So after a great deal of soul-searching, the parents decided to have the machine cut off and donated his two kidneys to recipients. Well, how do you define that? Would the cutting of that machine off in a case like that when the brain is dead, where only the machine is

pumping the oxygen, would that be prohibited if this provision is allowed to stand?

Mr. Jenkins Jim, what you have to do is look at our present law now. If that is murder under our present law, then it will be murder still. If that is negligent homicide, it will be negligent homicide still. If it's manslaughter, it's manslaughter still. If it's none of those it won't be changed by this provision. This provision doesn't change our law in that regard. It only prohibits making exceptions to it in the future.

Mr. Brown But why should it be there? Then why is it necessary if it only reflects the present law that we already have, when it is kind of cloudy. I don't really understand.

Mr. Jenkins The reason that it's there is that it...

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I rise in support of Mrs. Zervignon's amendment, and I can very vividly tell you why, and I think Senator Brown brought out one of the arguments that's definitely in favor of Mrs. Zervignon's amendment. I have unfortunately been put in that very position twice during my lifetime. One, when my father had lain ill suffering from cancer for six months, and I was called at 1:30 in the morning by the nurse that it appeared that he had passed away, and I immediately went to his home. He was there. I was advised by the nurse that she could call the doctor and they could possibly prolong his life for another few hours or maybe a few days at the most. It's a rather difficult decision to make. I said, "Don't do it. He has suffered enough." Apparently, he was dead. I don't know. And then only two years ago, I saw my sister lie there gasping for breath for several days, dying with cancer in the Schumpert Sanatorium in Shreveport with Dr. Holoubek as her doctor, and finally she stopped breathing and was for all intent and purposes dead. Dr. Holoubek said, "I could perform a quick emergency operation and possibly prolong her life for a few hours or possibly a few days if you want to do it." I said, "I don't want to do it." He said, "Don't prolong her suffering any longer." Mr. Roy and Mr. Jenkins tell you that this says that no law shall be passed. Ladies and gentlemen it does not say "no law shall be passed." If you will look back at Section 9 and Section 10, they say, "No law shall be enacted," but there is nothing in this provision about the state taking any action. It says that "it shall not be permitted" is what it amounts to. I think that this is something that is serious. It has to be considered. I am not in favor, and I hope no one interprets my remarks as being in favor of wholesale mercy killings. I don't go with that concept at all. I don't say there is no law against it, that you have done nothing if you commit it. If they have not prohibited it by some law, or have not mandated the legislature to enact a law which would make it a criminal offense, what have they accomplished by this? I don't know. Maybe under some interpretations of the law, maybe Mr. Jenkins is right; maybe I am guilty of murder because I didn't prolong the suffering of two people I loved very dearly for a few hours or a few days. I ask you to carefully consider Mrs. Zervignon's amendment. I think it is well thought out, well considered, and by all means should be adopted. I don't think that this provision is a provision for the constitution. If we need to outlaw it to prevent the wholesale mercy killings as there is some movement to authorize and legalize, I would go with that in the legislature, but I think you are asking the family, the loved ones of those who have seen their loved ones suffer for days and for months, to say that "no, under our constitution it says you must try to let them suffer a little

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possibly can between that sort of a society, and I ask you to vote against this amendment. Let me tell you this; I know a person in this city of ours that had a stroke. That person had good doctors, some of the most reputable doctors in the city of Baton Rouge, and they told the relatives of that person that that person would be a vegetable the rest of their life, that they didn't know how much longer that person would live. I want to tell you that that person who the doctors state would never be able to rationalize any more and that would die shortly, overcame that disability, regained the full faculties, got up and tended to her affairs. Not too much longer after that she had another stroke. The doctors told them, well, they know that there is no further possible chance of her ever getting up. In fact of the business, if I remember correctly, some of the relatives even started dividing some of her assets. But she recovered from that and her mind is just as good today as yours and mine. So don't say that we know when a person ought to be put to death. You're interfering with God's purposes on that, and what man has a right to except for a punishment for crime, to decide when another person shall live and when a person should die. That's what we're talking about. We're trying to let men decide when a person should live and when a person should die; that is when you kill them. I'm not talking about prolonging the life. This does not take into consideration the illustrations given by Mr. Drew. That is not euthanasia. That is not euthanasia. Euthanasia is what we call and refer to as mercy killing, when you put somebody to death.

Vice Chairman Casey in the Chair

Mr. De Blieux I just want to tell you this is a bad amendment, and let's take care of it.

Further Discussion

Mr. Jack I arise in favor of Mrs. Zervigon's amendment. Now, I just...this is a serious thing; I don't think it belongs in the constitution. If the time ever came that a breathing tube was to be pulled out of my throat, if I had an injury where my brain was destroyed that would ever keep me in the opinion of physicians, excellent ones, from ever being able to come to consciousness, to have any intelligence, lying there like a vegetable...I would like for my loved ones to make that decision whether or not that would be removed from my throat for my breathing, and not you, ladies and gentlemen. It would be my life. Also, suppose I was lying there in pain; I was alive...excruciating pain,...I was a hundred years old or a hundred and five. Everybody I knew was dead and I wanted...I was suffering. Shouldn't that be my right to tell them to quit artificially feeding me, to quit artificially making me breathe, to quit having me in some kind of breathing apparatus...just keeping me there against my will in pain regardless of what kind of pills they gave me. But let me tell you if you had this here, you get a different thing, that is a decision that was made. This is a new field; let's just don't keep stuffing things in this constitution that we don't know what's going to be; so I'm for...

Mr. Casey Will you yield to a question from Delegate Drew?

Mr. Jack I'm not going to yield to questions because nobody is an expert on this thing. We just...everybody is going to have to vote like they feel. That's just the trouble with this material having the word in there. Nobody's an expert. Somebody put on my desk, and all of ya'll's, the thing to try to tell us what it was—in detail, like we didn't even know what the word meant—mercy killing. That showed that certain people here figured we didn't even know what it was. Some of us don't know, don't know it all...so I in all deference, good friends, and I ordinarily would yield, but I don't think that anybody should have me try to answer a question and maybe get something

wrong. I'm trying to, as best I can, explain how I feel personally, and I think my members of the family would feel; so that's the reason I'm not yielding to a question.

Personal Privilege

Mr. Ourso One reason I rise is that every now and then we would like to be recognized over here by you and the Chairman, because we're going to have to get us a flag to be recognized. Looks like everything is coming from that side over there...I imagine ya'll have a crick or something in your neck. Second of all, I know you didn't recognize me for a motion, but if we're going to sit up here and listen to how everybody lost someone in their family, and how many people died, and how they're going to die; we're all going to die...everyone's going, so I'd like to move the previous question.

Mr. Casey Just a minute. Delegate Ourso, I did not recognize you for that purpose. I have a list of speakers here; I'll be glad to put you on the list of speakers. I realize that most of the heavyweight speakers are on the other side of the room, and I try to recognize as many of the delegates who wish to speak as possible. If you would like, I'll put you on the list of speakers. O.K. Please proceed, Reverend Landrum.

Why do you rise, Mr. Chehardy?

Further Discussion

Mr. Landrum Mr. Chairman, and fellow delegates, I was hoping that I would not have to say anything today. Go through a whole day as I did yesterday without saying anything. But, I believe that this particular amendment is a very bad and dangerous amendment. The very case that you mentioned about Florida the other day; we live in an age where transplant is becoming a very real thing, and how many people will lose their lives because somebody needs a lung; somebody needs a kidney; somebody needs something else. What basically...my argument is this; that no machine will keep a man alive forever. No amount of pills will keep a man living forever. He has a set time to live. Now, if we don't believe that man has a set time to live, then we have to start back over with the Preamble where we talk about God in the Preamble. We don't believe in God...if we don't believe that man has a set time to live; we have no right to say that somebody get them out of their misery. Who are we to say that we're going to get somebody out of their misery? I agree with them, but when you talk about pain...three years ago, my Mother with three hundred...with three blood pressure...up to three hundred, a heart condition, a very bad heart, poor circulation, and sugar...the doctor didn't want to do nothing for her, but my Mother is here today. My Mother is alive today. Now, she may not be here no longer than today. How many times has the doctor said that this person will not live? They cannot live. If we believe everything, and I have a great deal of respect for doctors, but I don't believe in doctors that much that because of the condition right now I'm going to put this person to death. I wish you could have been with me at a meeting here in Baton Rouge with one of the delegates who brought me to lunch one day, and where a leading doctor right here in Baton Rouge...he told the people at that luncheon that seventy-five percent of all medicine, of all cures that we are using today was just brought about in the last fifteen years; so we never know when something new will be invented. God bless you, and thank you.

Questions

Mr. Brown Reverend Landrum, does man have the wisdom or the right to decide whose life is meaningless?

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Mr. Fontenot. Now, I'm sorry, I didn't quite understand you.

Mrs. Brien. I said, that our laws give the right to decide whose life is meaningless?

Mr. Landrum. No, I don't believe he does.

Mrs. Brien. Does man have the right to trespass on the very will of the Creator who gives life and takes it away?

Mr. Landrum. Mr. Brien, every time I take a body to the grave I say, "God took it, and God will give it back." Thank you.

Further Discussion

Mr. Juneau. Mr. Chairman and fellow delegates, I'll make these remarks very brief. I'd like to point out one fact to you. Not one, not one of the fifty states in this union has such a provision in their constitution, and I think the reason for that is obvious. We're talking about a very delicate matter, and I don't think there is anybody in this convention who favors mercy killing; at least I don't know of any. That's not the issue. The question is when you're dealing with an intricate, scientific medical problem that we have, do you want to put that in the constitution? I favor the amendment. I think that it ought to be taken out. Insouciantly put, it's just simply a question; do you want to do...do you want to stretch out in an area we've never stretched before, and take that away from the legislature which is a responsible body for the people, especially in an emotional area like this? For that reason, and that reason alone, I support the amendment for taking it out and leaving it in the legislature; and as Mr. Jenkins said "we know what the law is today, and I don't look for any change in that regard" so why tamper with it, and why venture into an area that I don't think we know where it's going to be chartered in the future.

Mr. Fontenot. Do you know what could happen in the future?

Mr. Juneau. Yes, sir.

Mrs. Brien. Do you know what it would be like to happen in the future?

Mr. Juneau. I really don't know what can happen in the future, Mrs. Brien, nor did the people in the past know what could happen when we were talking about capital punishment and non-capital punishment. I'm for leaving that for the legislature.

Mrs. Brien. The people in Germany didn't have it before either. It never happened before, but it did happen; so don't you think it maybe could happen here too?

Mr. Juneau. Anything can happen, Mrs. Brien. I'm content with the present system we have. We're talking about a very delicate scientific matter, and I don't think that I want to be in a position to prejudice the next hundred years of this state from a medical science standpoint.

Mr. Will. I have more to say, Mr. Juneau, that it says "no person shall be subjected to euthanasia now, who prevents the subjugation, the state or another person? Where does the prohibition come from?"

Mr. Will. But I might add, the arguments going to be made, and let's get the issue clearly before the floor right now. You're going to have a "no law shall prohibit." That's better

than what they have, but I still say that ultimately we still ought to not stick it in; nor has any other state in this union, obviously, for the same reason.

Mr. Will. Well, that prompts me to say that I don't think it more apropos to put whatever is in Section 12 of the legislative article, and wait until that time because we haven't settled the yet-general inspection laws? Isn't that the place for that if we have to put it, now, I believe we should? I'm for the amendment.

Mr. Juneau. If you would be so inclined, I would like to see it.

Further Discussion

Mr. Fontenot. Mr. Chairman, let me read the definition of this particular word everybody is so concerned about. I know somebody just read it previously, but Mr. Stagg just showed us that "The word 'euthanasia' is defined as persons suffering from incurable diseases." This is just one definition of it. There's probably a lot of medical definitions; every doctor, probably, in the nation who might have a different philosophy as to what exactly this word means. There were several speakers that mentioned cases of certain individuals were in such serious conditions that it was probably the best thing that they do let certain individuals die. I'm sure everyone of us here have been faced with the same situations and I'm sure somebody has made the comment previously. "This person is suffering so much, probably the best thing that could happen was that this person would die." All of us have been put in these particular situations. I don't think that we could be subjected to murder for thinking this or for letting a person die who has an incurable disease. If you don't put some language in this constitution concerning this particular word, and I'm not in favor of the Bill of Rights Committee Section 12, as I am, I'm in favor of the amendment Mr. Roy has proposed on behalf of the Bill of Rights Committee. I think it's necessary language. If you don't put in language, you might have what happened in Florida happen with our own legislature. There were certain individuals in Florida that proposed certain bills on this particular topic, and it was voted down, but I don't know what exactly could happen with our legislature; there's no telling what could come out of that particular body. Certain bills in Florida had something to do with, I'm just reading something that I was passed out this morning, a bill would not only commit voluntary euthanasia but would also allow three physicians to decree and execute a death sentence with the approval of a circuit judge on anybody whose life has become meaningless as the bill expresses it. Now, what I'm concerned about is not those individuals who would like the doctor to quit treating them and let them die. I'm concerned with those individuals who have some kind of disease or some particular physical or mental aspect—physical defect, if you want to call it, that may be classified their whole life... their lives may be classified meaningless; but suppose these individuals want to continue to live. What about these individuals? Are you going to let three doctors and a judge say "well, your life is meaningless; go ahead and let's execute you or let's do something with you?" What about those individuals who want to continue living? What about the individual who has incurable cancer hoping that the next day some research scientist might find a cure for it? He might want to continue living. Are we going to let a law be passed that would allow a judge to decree a man meaningless...a man's life meaningless...and let him die? I'm not for this. I'm for these words that the Roy Amendment proposed, "no law shall subject any person to euthanasia, torture, cruel, excessive, or unusual

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"punishment." Like I said, if you vote for the Zervignon amendment, you're going to do away with this particular issue we're talking about. I'm in favor of keeping it in the constitution, and if there's no other speakers on the issue, I move the previous question.

[Motion for the Previous Question withdrawn.]

Further Discussion

Mr. Weiss Mr. Chairman, fellow delegates, I'm sure many of your minds are made up. I can't confuse you with the facts. Emotion is a very strong feeling; it runs through me hot and furious at this time. Let me tell you why. This is no old issue. This has been since time eternal, and it's amazing to me that we cannot pass in this body a statement to the effect "Thou shalt not murder." The sixth commandment, the meat of the Holy Bible; but let me explain to you even more so why I'm concerned about this, and that is, I challenge any of you... Judge Tate and those who are congregated in the back, and those who are congregated here and there, and those who are listening patiently and kindly--to cite more than one, two, three, four or five examples where I over the past twenty-eight years have been repeatedly faced with the decision on whether to prolong the act of living and prolong living or to prolong the act of dying. These are the issues; prolong life or prolong the act of dying. I say to you euthanasia is killing, mercy killing, ridiculous adjective terminology to murder. This is what we're talking about here today, and it's very imperative that it be in this constitution. Now let me tell you, the British Lord of Commons, for thirty-four years, have debated this on three long occasions and have defeated it. There are four legislatures, possibly six, in this country that are now facing this problem; but let me let you know what the young people, some of us not as young, are believing today. Approval of mercy killing rises; fifty-three percent of people under thirty accept the proposition. Euthanasia idea grows--euthanasia is likely the next great moral debate in the United States; right to die has majority support. If this isn't confusing, right to die...

The right to die is not yours or mine alone. We pray every morning to God that we may finish this day, and I pray nightly for all of us and myself and my family, and I'm sure you do. We are not omnipotence, but we have the right to define laws and that's what we're here about. I ask you to defeat this amendment and put the word "euthanasia" in and make Louisiana a forward progressive state willing to face the issues and ashamed of what our world and country has done. Millions have been murdered in the name of mercy, in the name of anything you want to call it, but this is downright murder. I am sure that those of you that oppose this do not interpret it this way, and the issue is a very simple one in the medical mind. Let the Supreme Court decide, as our Chairman Henry has said, on these issues; but euthanasia by the dictionary is mercy killing--the act of killing. If I may draw an analogy, since I'm no attorney, is rape as active? Is there a passive type of rape? There is no such thing as passive euthanasia; if you agree to die and stop medication, you are entitled to it; you are entitled to discuss with your doctor these issues; you are entitled to die. As Mr. Drew pointed out when he was responsible for the unconscious Mother or sister, where he had the power of attorney to speak, but even more so he had a compassionate position. These issues never reach the courts, but what does reach the courts are cost analysis--faulty individuals, insane, idiotic. I've had people in prison because of their beliefs; now we're simply asking you this, that they not be killed for mercy.

Question

Mr. Kelly Doctor, I want to suggest what I think the committee is trying to do. But the committee has asked me about the wording and I say it now and it is the situation where the man is on the machine and the doctor...he makes no injection, he does nothing; but the man on the machine or the family, say if it's a child involved, decides it's hopeless and they say "unplug it." Now, is that situation going to be in conflict with Section 12 as it is written?

Mr. Weiss I see no conflict whatsoever, and I'm glad you asked the question because euthanasia is mercy killing. When you, as a father of that child, agree, or you, responsible for an unconscious mother, agree, or you agree as a physician, agree to stop having medications given to you, that's one thing; but when you ask me, as a physician, to kill you that's something else.

Point of Information

Mr. Cannon I would like to know... something as a layman I don't feel that mercy killing as such, a two word definition, is a satisfactory definition of this word that we're discussing, "euthanasia." Could some learned counsel here...give me a better definition than purely mercy killing?

Mr. Casey Delegate Cannon, I can't, as Chairman, answer questions that you may have about the interpretation of contents of a section or an amendment. I would have to refer you to a learned counsel on the floor who can answer that question. The job of the Chairman is to answer questions of order and points of information.

Yes, Delegate Weiss, why do you rise?

Mr. Weiss Point of information. Who is a learned counsel on that, sir?

Mr. Casey Are you a learned counsel on that, Dr. Weiss?

Mr. Weiss Yes, I think I am.

Mr. Casey Why don't you talk to Delegate Cannon then.

Also, Delegate Duval has been pointed out as a learned counsel.

Mr. Weiss I would be happy to.

[Previous Question ordered. Record vote ordered. Amendment adopted: 60-45. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment... is how it reads when you have to change it in light of the prior amendments... Amendment No. 1, on page 6, line 11, immediately after the word "treatments" and then we need to change this to read as follows: page 6, line 11, immediately after the word "punishment" added by con... Floor Amendment No. 1, proposed by Mr. Denny and adopted by the convention on today. Change the comma to a period and delete the remainder of the line and delete line 12 in its entirety.

Explanation

Mr. Jack The purpose of this amendment is to take out the words "and full rights shall be restored by termination of state or federal supervision for any offense." Ladies and gentlemen, what that is, is to automatically after a person terminates a sentence...he's placed in the position of all of his rights just before he ever went to the pen in his life or was convicted of a felony...Now, we have already gone into this thing of restoring rights and citizenship to people. I hope you will listen to this because unless you do, you might be misled and have a conflict in what you're doing and what you've done. Now, on page three of the executive material,

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executive department, that we finished way back under F stated, and here's the law regarding the pardon board and first offenders, multiple offenders, and all. "Pardon, commutation, reprieve, and remission, board of pardons. 1. The Governor shall have the power to grant reprieves to those convicted of offenses against the state and upon the recommendation of the board of pardons may grant commutations of sentence, may pardon those convicted of offenses against this state and may remit fines and forfeitures imposed for such offenses; provided however, that each first offender was never previously been convicted of a felony shall be eligible for pardon automatically upon completion of his sentence without the aforesaid recommendation." Then it goes on and sets up "the board of pardons shall consist of five electors appointed by the governor, subject to confirmation by the Senate. Members of such board shall serve a term concurrent with that of the governor appoint them." Now, ladies and gentlemen, I have just finished talking with my district attorney in Shreveport. I knew what the law is here, but I wanted it confirmed because Mr. Derbes and I disagree. I state that this section here, that restores full right at the termination of federal supervision for any offense... that is restoring all his rights, and if that man was a first offender, second offender, third offender, fourth offender, meaning those times he had been convicted prior to that of felonies and/or gone to the pen... that if a wife goes out... if he was in any further trouble when he took that witness stand... the district attorney to impeach him could not bring out, which is the law, that he had been in the pen before. Now, the law is, it's the case law in Louisiana; I just talked to Mr. Richardson. I said is our district attorney... that law is, if you get a pardon, you get a restoration of citizenship, whatever you want to call it, you get your full rights restored which this material here provides for, that I read you... that we are studying over now in Section 18, the last line. If you get those rights, if you pass this and don't pass this amendment, then no matter how bad a man is that's been in the pen one, two, three, four, five, six, seven, and I've seen them eight at times, because I handle pardon board and parole matters, as you know. Now if those people finish their term under this material here, a full right shall be restored by termination of state or federal supervision for any offense no matter how rotten they were in the pen; even if they finish every day... didn't get any good time... automatically under this, they are restored. Now that is a dangerous thing. We have a well thought out section that I read you in the executive material. Protects first offenders and provides for the others, and it's a well screened thing. You better think on these kind of matters, so I ask you to adopt this amendment to strike out that language in this proposition.

Questions

Mrs. Soniat Mr. Jack, isn't it true that no matter how bad a person has been, no matter how many times he served a sentence, if he has enough money, he can get a pardon and his rights are restored?

Mr. Jack I don't... I wouldn't say that because that would be a horrible reflection on the pardon boards, on the governor, and I certainly do not believe any of those people that I've ever known as governor and members of the pardon board, which has been the attorney general and lieutenant governor and the trial judge, would be subject to doing something for money, so my answer is no. I think those gentlemen... you could not bribe no

the law a constitutional amendment passed several years back where a first offender, that means a person never prior to that convicted of a felony... that person can apply direct to the governor, he don't go to the pardon board; when he's finished his sentence see... he's no longer on parole or probation... first offender for a felony... he can even go to his local Department of Corrections nearest to him... like if he's in Shreveport, there's one in the state office building... they will fill out a little slip... has about five lines, that is sent down here to the department of corrections. He's a first offender. He don't need any lawyer, the other's don't either if they apply and ask how to do it. They furnish rules, but the first offender is very simple. But they want to check out to see what kind of man that was at the penitentiary, whether he behaved... lot's of times they may overlook things and they discover them... what kind of prior life, and all that, and they go over it. Now, I represent people at the pardon board, but I'm also a citizen. I don't want people turned loose unless it looks like they are going to behave. I don't want a person to be granted a pardon and restoration of citizenship if he's still not worthy of it, that's the whole thing; but this thing would have nothing to do with that. It would give this person "full rights shall be restored by termination of state or federal supervision for any offense"... wouldn't matter if he had been to the pen four times. Now, I told Mr. Derbes that in my interpretation, and I tried to get the attorney generals office and nobody answered... I did get my district attorney, and this is going to grant the same rights if they go through the pardon board now. Everybody, once they are through with their sentence, it's going to wipe the slate clean no matter how bad they were at the pen. I think that's bad, and I think you should knock this out of this material here... this proposal. Any other questions?

Mr. Jack, isn't it a fact, though, that if a man is in the penitentiary they don't let them out? Their sentence is ended. They have bad time. They have to have good time in order to get out, isn't that true?

Mr. Tapper, you're wrong. If a person was sentenced to ten years, you couldn't keep him there on and... even though he was bad, unless he got another conviction. That's the maximum... say a man is sentenced for a year... make it say fifteen years... just can't keep him there after that because he's incorrigible. His total sentence is fifteen. Unless he was sentenced in court to additional... like if he escaped or if he knifed somebody, but they don't have time to prosecute for some of those things they would on the outside.

Further Discussion

Mr. Roy Ladies and gentlemen of the convention, I know that you're getting tired of seeing me up here, but we're down to the very end. Mr. Jack is just absolutely wrong with his conclusions that if you receive a pardon that the slate is wiped clean with respect to your prior multiple offenses. It just... it do that. It simply... a pardon simply restores your rights to vote and to citizenship, but it doesn't change anything that is or was. It doesn't change the fact that you committed a crime. It doesn't change the fact that you're white or you're black or orange or red or whatever have you. It simply restores you to your rights that you had before. You didn't have a right before to commit crime, so you still don't have one in the future. It doesn't change absolutely nothing to do with the multiple offender law and Mr. Richardson, in his comments before our

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think, and think that you ought to know, is that when a man...let me tell you one other thing; anytime you're found guilty or convicted of a felony or you plead to it, even if you don't go to Angola and are given a suspended sentence because it's a first offender or something like that, you are deprived of certain citizenship rights. Most poor, ignorant, honest...folk don't know that their citizenship has been removed. They don't know that they have to go to the governor for a pardon. Secondly, they don't have the money to get a pardon, and thirdly, they don't know a lawyer to go give them the money to get the pardon. Now, all we're trying to do is to say that if we believe in rehabilitation and we believe that when a man has done his time and paid the state back for his crime, he should automatically get his citizenship restored, which means in certain cases, the right to hold certain types of jobs. There are certain jobs now that you can't hold if you've ever been convicted of a crime without being pardoned. This simply provides that vehicle. The amendment is not correct. It doesn't do what Mr. Jack says it does, and it doesn't address itself to the question that's involved here.

Questions

Mr. Lanier Mr. Roy, you don't mean to imply in your statement, do you, that all persons who are released from the penitentiary having served their sentences are rehabilitated, do you?

Mr. Roy Oh, no, obviously not.

Mr. Lanier Now, with reference to your comments about the multiple offender law, is it your position that a pardon would not preclude the imposition or use or exercise of the multiple offender law?

Mr. Roy That's right.

Mr. Lanier Is there some jurisprudence on that?

Mr. Roy Mr. Lanier, it's...I don't know that there's actually...is there jurisprudence against it if you have a case...say it, but I don't think there's any and I don't think that anybody could logically argue that the fact you've been pardoned erases the crimes that you actually, in fact, committed. It has nothing to do with the multiple offender law, because it simply restores you to rights of citizenship which are the right to vote, etc., and not the right to commit crime or to be absolved of having committed crime.

Mr. Lanier Does not the effect of a pardon put the person back in the same position as if the crime was not committed and he was not convicted?

Mr. Roy No, it does not. Only with respect to his rights as a citizen, but it does not take away the fact that he was guilty of the commission of a crime.

Further Discussion

Mr. [A.] Jackson Mr. Chairman, ladies and gentlemen, I rise in opposition to the amendment before you, because I think that the committee was trying to address itself to a rather serious problem that is not described by the few lines of phrases before you. I think that when we talk about prison reform in this country, when we talk about some degree of rehabilitation, we certainly have to recognize the serious problems that confront individuals who have been incarcerated and who are now trying to make their way again in a free society. Now, all of us know the problems that face individuals who have been released from prisons. All we are saying here is that an individual ought not to have to pay the rest of his life, time and time again, that he ought not to have to face the fact that everytime he asked to be employed that he is faced by the fact that he once went afoul of the law. Now, I know that it's a practice in this state for individuals to receive

pardons, and I know what the law provides, but I also know that it's awfully expensive to receive a pardon in this state. I do not believe that it's fair to take from a man his basic rights of citizenship, to have them pay time and time again, once he has paid his debt to society. Now, I heard someone allude to the fact that the district attorney from Caldo Parish was opposed to the language in this section. I have in my hand the transcribed record of the district attorney's appearance before our committee, and he did not say that this section was in conflict with the multiple offenders law. It is not contained anywhere in this section that I hold here which bears his testimony as it relates to Section 18, Right to Humane Treatment. So, I do not believe that anyone can say that this section violates the multiple offenders law. I also point out to you, ladies and gentlemen, that in other state constitutions we have this section, so in the interest of prison reform, in the action of humane treatment for individuals who have paid their debts to society, I would ask that you would defeat this amendment. If there are no other speakers, Mr. Chairman, I call for the question on the amendment.

[Quorum call: 94 delegates present and a quorum.]

Questions

Mr. Singletary I believe the law is that when you're convicted of certain crimes you lose your right to own a weapon. Now, wouldn't the committee proposal stop that? Wouldn't it make that law illegal?

Mr. [A.] Jackson Yes.

Mr. Willis Mr. Jackson, isn't this provision...that last clause sought to be stricken...solely a device whereby a person who has paid his debt to society can go get his receipt from the constitution instead of going to the governor?

Mr. [A.] Jackson That's exactly right, sir. That's all it is, sir.

Mr. Denney Mr. Jackson, I wanted to ask this question of Mr. Roy and possibly he will listen also; in the event a lawyer such as Mr. Roy or me were convicted of embezzling funds from our clients we would go to jail and we would also be automatically disbarred from the practice of law. Under the language of your amendment when full rights are restored, does that automatically restore my right to engage in the practice of law?

Mr. [A.] Jackson No, sir.

Mr. Denney How do you distinguish that? That is a right I had.

Mr. Roy Well, you have forfeited your right as a lawyer under the provisions of the Louisiana State Bar Association which are proper laws on it.

Mr. [A.] Jackson Well, not only that, Mr. Denney, that's not a right. That's a privilege to practice law, to practice medicine, to engage in the profession of teaching is a privilege and when you abuse that privilege you lose it. I move the question, Mr. Chairman.

[Previous Question ordered. Record Quorum call: 96 delegates present and a quorum.]

Closing

Mr. Jack All right. Now, I'm great believer in rehabilitation. I've said before if I had an independent income I'd devote my life, long and short, to rehabilitation.

[Quorum call: 96 delegates present and a quorum.]

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Mr. Weiss: All right. Now, I'm a great believer in rehabilitation. But I'm a great believer in the criminal law from the day I started. I've done all I can to help rehabilitation. This proposal that reads "and full rights shall be restored by a termination of state or federal supervision for any offense" does not necessarily mean the prisoner has been rehabilitated and should be able to walk out of that penitentiary and pick up a pistol which he had a right to do beforehand. There are a whole lot of these things you're giving back, and I don't care what you say, anybody at Angola that's been there a year, they know what a pardon and what full rights being restored means. This proposal will do it. A three-time loser, let's say at Angola, that never voted and never is going to vote, not going to run for office; why does he want his citizenship back? Because it'll wipe out the first, second and third offense and because he cannot later be prosecuted if he commits a crime under a special prosecution of being a second offender or a third offender or a fourth offender. That's exactly...I won't answer until I finish. Now, anybody...they call them penitentiary lawyers, they know that down there. Most of the prisoners know that. Now, that is a fact of life. Now, if you want to let everybody to save a few cents as you say...now, I'm not advocating to have to hire lawyers...that's why we hope that executive material that a first offender doesn't even go to the pardon board. I've told you that in my opening statement. I'm telling you again. They want to check out these people. Now, the next thing on this business is one of the...I don't want to call people's names...one of the speakers was talking about...you didn't restore their full rights soon as they got out...if they went to apply for a job and they'd ask them about a questionnaire. The inference was...they didn't complete the thought but the inference was unless this passed or they had a pardon and restoration of citizenship, they'd have to answer...they'd been convicted of a felony. If this passes, they could answer no, and that's correct, just like it is in parole. Now, this proposal then not only could they answer that...no, never convicted, because of this being passed but also if they were in court...try it again...without a pardon but if this passed they could...the district attorney could not bring up they had been convicted of a prior felony. Now, I talked to Mr. Richardson on the telephone just before this came up and he bore me out in this and I've practiced law for 41 years and I've practiced pardon board and parole board law since 1940, and that's a long time, 1940, 1950, 1960, 1970, that's 32 years of those 41. That's a lot more than most of the lawyers here. This is your business. If you don't want to screen people...here down in Houston people that had never been into the penitentiary killed 26 people...those sex fiends. Let's don't screen them. Let's just feel so sorry for them. Let's don't punish them. Men out in California kill all those people. Let's don't screen them. When they get out the pen, you say they're rehabilitated. Maybe they've killed twenty people...fifteen. This is going to treat everybody the same. If this ain't the limit to just say you're rehabilitated by having served the sentence...

6. Delete Times 9 and 10 in their entirety and insert in lieu thereof the following...and I think for clarity too.

"Section 18. No law shall subject any person

Point of Order

Mr. Derbes: Maybe I'm completely out of order, Mr. Chairman, but it seems to me that the section, as it presently reads, says "no person shall be subjected to torture or cruel, excessive or unusual punishment," and all that the Roy amendment does is put back euthanasia which we just voted on.

Mr. Singletary: I think it's better to read it as it presently stands. I've advised that the new language is "no law

Points of Information

Mr. Singletary: Mr. Chairman, fellow delegates, we do not want to delay the convention. The wishes have been expressed. There are two matters to discuss here. The fact that many delegates voted for the Zervignon proposal because it involved, perhaps, some personal problems in which the committee used the words, "no person." The intent was that "no law"...that is no legislative act or law would permit or subject individuals to either euthanasia, torture, cruel, excessive or unusual punishment. Another point to make is that the voice vote indicated...and although these people may have been present...that seven people voted for the Zervignon that may not have been here. The other factor that we would like to point out is that this will answer the problems...I hope...that have been brought up and if there are any questions, we'll be glad to answer them. Otherwise, I move the previous question.

Questions

Mr. Singletary: Doctor, under this amendment would euthanasia be permitted?

Mr. Weiss: No law...no law, Delegate Singletary.

Mr. Singletary: I know, but my question is...

Mr. Weiss: ...could be enacted which would allow euthanasia, and is, and is not.

Mr. Singletary: Yes, under your amendment euthanasia would not be permitted.

Mr. Weiss: It would be permitted to allow euthanasia.

Mr. Singletary: Yes, but my question is...

Point of Information

Mr. Gravel: Mr. Chairman, I'm very sorry about this question, but I wish the Clerk would read the amendment exactly the way it stands.

Mr. Weiss: I know that there is something wrong with it.

Mr. Weiss: I know that I understand what it is.

Mr. Henry: Well, apparently the Clerk thinks there's something wrong with it. He's trying to clear it up here. Are you not, Mr. Poynter?

Mr. Poynter: That's correct, Mr. Chairman.

Mr. Derbes: I think there's something wrong with it. I think it's better to read it as it presently stands.

Mr. Henry: I've got another problem too.

Mr. Henry: You've got more problems than I do. Take your seat.

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Mr. Weiss Mr. Gravel, the legislature could pass no law...

Mr. Henry Wait, Dr. Weiss. He understands it. He just wonders if it's written the way you're explaining it, don't you see? Like if he told you to take out the kidney, and you went after the jugular vein...and you cut his tongue out.

Mr. Weiss Do you have a question, Mr. Gravel? I move the previous question.

Mr. Henry Wait, Dr. Weiss, I'll tell you when we've got to get it right.

Mr. Weiss This has been studied for centuries...

Mr. Henry Dr. Weiss, easy...steady as she goes... turn the front mike off please.

Mr. Poynter, read it the way it should properly be drawn.

Mr. Poynter Well, there would be two or three ways to do it. I think, at least the way that I decided and probably the fastest way, make Amendment No. 1, striking out the Denney amendment. Amendment No. 1, just strike out the Denney amendment. Amendment No. 2, on page 6, delete lines 9 and 10 in their entirety and at the beginning of line 11, strike out the word and punctuation "treatments".

Mr. Henry And then now would that make the section read?

Mr. Poynter O.K. it would read as follows, Mr. Chairman:

"Section 18. No law shall subject any person to euthanasia, torture, cruel, excessive or unusual punishments..." pick up on line 11... "and full rights shall be restored by termination of state or federal supervision for any offense."

Mr. Henry Now, is that the way you wanted it to read, Dr. Weiss?

Mr. Weiss That is correct, with the advice of my legal counsel.

Mr. Poynter Well, you'd probably need a comma, Mr. Chairman, after the word "punishments"; now.

Questions

Mr. O'Neill Dr. Weiss, Mr. Singletary asked you if euthanasia could exist. The question is not that. The question would be, would our murder laws, manslaughter laws, etc., still be in effect with this and wouldn't you agree that they would be and that's the proper question?

Mr. Weiss Yes, and I think this is what Mr. Jenkins was trying to make the point...

Mr. Zervigon Just to clear up in my own mind exactly what it says; as I read the amendment presently before us, it says "no law shall subject a person to euthanasia." You explained it to say that no law shall allow euthanasia. In my mind, those are two different subjects.

Mr. Weiss The courts will have to decide these words. I'm not an expert on them, but I know what I mean, and I think I know what the word "euthanasia" today means.

Mr. Zervigon No sir. I'm questioning you about the difference of "Subject or allow."

Mr. Weiss "Subject" implies to me an active process.

Mr. Zervigon "Subject" implies to me "requires." Is that the way you read it?

Mr. Weiss I don't read it that way.

require. I don't read it that way.

Mr. Lanier Dr. Weiss, I'm trying to get at, I think what Mrs. Zervigon was getting at. If this thing says "no law shall subject any person to euthanasia," would that then mean that private persons could subject someone to euthanasia.

Dr. Weiss No. According to the researchers who... an attorney... it's my understanding, that "subject" means no one can be required. The law may not require. It is an involuntary situation. They do not require that people be subjected to euthanasia.

Mr. Lanier Wouldn't we have this same problem with all of these other things too, with the torture, cruel, excessive or unusual punishments?

Dr. Weiss You may not be subjected to it. That is... you may not request it. I believe, to draw an analogy, that you may not commit judicial suicide, was the instance you used this morning, so nicely to me, when you go to court. You may not admit to guilty to a capital punishment, and therefore, you can admit to capital punishment with life imprisonment, but you may not commit judicial suicide and this is the same thing, gentlemen, who are attorneys. Thank you, Delegate Lanier, for bringing that up to my attention this morning. Perhaps the attorneys will better understand it, in that light.

[Text of motion to reconsider tabled.]

59-38. Motion to reconsider tabled.]

Personal Privilege

Mr. Lowe Mr. Chairman, delegates to the convention, I won't take a great deal of your time. It just aggravates me a little to look at the fiasco over the record vote on a roll call at this time of day, and I know that some members are aggrieved because of this. I'll give you an example right now. At a quarter to nine this morning, Robert Aertker was sitting at his desk; he voted every vote, I listened to all of the arguments, and he told me he had to go to L.S.U. to make a talk about the Constitutional Convention to the American Association of University Women and that as soon as he did that, he would be back to the convention. Now, it aggravates me to think that the delegates to this convention are taken and the amount of contribution that they are making to the convention is gauged by record votes here and record votes there. We saw that happen with PAR, and PAR's analysis had no more basis of what a delegate's contribution was or was not to a convention at that time than the number of trips that a delegate would make to this mike or the number of trips that a delegate would make to pick up his coffee. That's about how well thought out PAR's analysis was. Yet, on August 15, PAR wrote to their board of trustees and said, "the violent reaction," and I quote, "the violent reaction of certain delegates only added to the public's interest," which indicates that if a delegate is going to question PAR, it's a violent reaction. It only adds to the public interest and puts that delegate in a poor light. I submit to you that I would hate to see the press today, pick up the record vote that we had and gauge any delegate's interest in this convention as to whether he was present or absent at that particular time, and as to whether it was a Saturday or a Sunday, because there are many reasons that a delegate can leave this convention. I'll reiterate again, Delegate Aertker's proposition. You could look at Delegate Aertker and say he is not interested, yet he's making a bigger contribution at this time... it took an effort to leave this convention, to hurry to L.S.U., to be there for 12:30 to make a talk before this group and to say that he will continue to be active in the convention.

[Text of motion to reconsider tabled.]

... something that they can possibly put forth under a great deal of trial and tribulation to make the contribution that they make. It's for this reason that I rise, to say that any time that we take one record vote, or two record votes, or five record votes and try to gauge a delegate's contribution, we, some place down the line, are going to do a serious injustice to one or more delegates. They will never ever erase off of their record. Just as PARR says, I agree with them, "the will reaction of certain delegates will only serve purpose, and that is to add to the public's interest." It's not whether that delegate is doing a good job, but that the public's interest and what has been printed about that delegate, and that's all that it will accomplish.

Amendment

... page 6, line 11, immediately after the word "restored" and before the word "by" insert the words "for any first offender".
If anyone is still not real sure of everything I read out there, what, actually, you've got this section is the last amendment and then after the last amendment, add... pick up with the word "and" on line 11. So you put the last amendment together with lines 11 and 12 and that's what's viable at this juncture.

... Drew ... Chairman, ladies and gentlemen of the convention, the reason I had asked that it be passed because there is an amendment pending which would change "rights" to "restoration of citizenship," which I think is a necessary amendment that should be done. Basically, what mine does is instead of saying "for any offense," it says "for first offenders," which puts it in line with the article adopted in the executive proposal. The only difference between this, with this amendment and the executive proposal amendment that was adopted by this convention, is that the executive proposal shall automatic states... "shall automatically be eligible," which is deleted from this section by the committee. So, this would put Section 18 pretty well in line with what the convention has already done in the executive proposal except... I said, this says "for any first offender." The other executive proposal says that "the first offender shall automatically be eligible"—that is the distinction which I think that is some difference. Therefore, I ask the adoption of the amendment to limit this full restoration, and I'm hoping that the word "rights" will be changed to "citizenship." I ask for the adoption of the amendment.

Amendment adopted:

Amendmen:

Mr. Poynter Amendment No. 111 ... page 6, in Floor Amendment No. 1 proposed by Delegates Roy, et. al., and adopted by the Convention on today, immediately after the word "punishment" at the end of said amendment, strike out the comma "... and insert immediately thereafter the period "." and insert immediately thereafter the ...
"Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense." out lines 11 and 12 in their entirety (Mr. Chairman, in this ever changing convention we need to add the language) including Conventional Floor Amendment No. 1 proposed by Mr. Drew and just adopted.

Mr. Derbes Ladies and gentlemen, I give you an opportunity to do in clear and concise terms what I feel the committee's original intention was. That is to restore to individual convicted persons, after they have discharged all of their obligations to society, two basic rights of citizenship. One, the right to vote, and two, the right to work. That is the right of employment and the right to hold office which are now denied to them. I suggest to you that our current system of requiring an individual to go before a Pardon Board, to advertise in a local newspaper, and to finally and ultimately get what may frequently be a political favor from a governor of this state is unnecessary and does society no good. It is merely a further discouragement and a further, I think, hurdle to the ultimate rehabilitation of the individual. This is an anachronistic and archaic Roman law concept which came down as capitis diminutio from the early developments of modern civil law. In my opinion, it has no place, it has no place in modern society. A person who has fully discharged, by virtue of the termination of his sentence, the termination of his parole, the termination of his probation, all of his obligations to society need not go on his knees again, to those people in power and ask for the right to vote. I don't think that in the particular instance of restoring a right to citizenship that these onerous obligations should be placed on the individual regardless of the number of his convictions. I suggest to you that the present system is nothing more than an instance of patronage and an instance of further business and substantial income to some attorneys in this state, and does not provide, in my opinion, any reasonable benefit to society. I yield to any questions.

Questions

... Mr. Derbes ... you ...
Mr. Derbes No, sir, I do not. I do not think that this right should be limited to first offenders. I think that... I believe that when a... a conviction on a second offense or a multiple offense can result in extensive probation and extensive parole-long term confinement. The first offense can be taken into account when determining the sentence for the second offense. Why, after a person has fully discharged his obligation to society, should he then have to go on his knees to get the right to vote, regardless of the number of offenses?
... you know this is a friendly question? This wouldn't prevent the right of the state to bring an habitual offender charge in the second offense, would it?

Mr. Derbes Absolutely not, it has nothing, in my opinion, to do with the conduct of trials for multiple offenders, the sentencing of multiple offenders, the probation and parole of multiple offenders.

Mr. Arnette Jim, this is just for information-- for my own information. The full rights of citizenship would just entail things like the right to vote, possibly the right to hold office and things of this nature, the right to work?

... Mr. Arnette ...

Mr. Arnette It would not prevent the legislature from say, passing a law that a convicted felon could not carry a weapon or cannot own a weapon

Mr. Derbes Absolutely not.

... the present law is.

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Mr. Derbes Absolutely not.

Mr. Velazquez Delegate Derbes, do you know that I consider this the best thing that you have written so far?

Mr. Derbes Are you for it or against it, Mr. Velazquez?

Mr. Velazquez I'm for it.

Further Discussion

Mr. Drew Mr. Chairman, ladies and gentlemen of the convention, I rise to oppose this amendment, and I must make an apology to you when I mentioned this amendment in the earlier amendment that I just offered that was adopted and laid on the table by this convention. The reason I had asked the Chair to permit me to pass my amendment because I knew that Mr. Derbes had this amendment which puts it right back as the committee proposal. It would therefore, been more appropriate for my amendment to come after Derbes' amendment. I wholeheartedly agree with the first part of his amendment which changed "rights," which is way too broad. There is no limit to what one's "rights" are, and to restore "rights," we don't know what we are talking about. I think that the intent, possibly, of the committee was "citizenship," and for that part I would have to agree with. I have to disagree and ask you to vote against this amendment because if you do, you are undoing what you just did and laid on the table in my previous amendment. Now, I have an amendment that is on your desk at this time that will change the word "rights" to "citizenship" which will take the good part of this amendment and incorporate it into the proposal. If you do adopt the Derbes' amendment as written, you are completely reversing your stand on the vote you just cast on my previous amendment to limit this automatic restoration of "citizenship or rights" to first offenders. Now, I'm not one that's much for humor, but in our law it has been held that a dog is entitled to one bite. I rather doubt that a human being is entitled, with our intelligence, any more than a dog. So, I think we are entitled to one bite and the rest of the time we are entitled to ask that you defeat the Derbes' amendment. My amendment on the table will change the word "rights" to "citizenship," and I will come with that as soon as possible.

Questions

Mr. Lanier Mr. Drew, did you understand Mr. Derbes to say that even though these persons would have full rights of citizenship that because of their convictions that certain limitations could be imposed upon them?

Mr. Drew I think it would be a perfect example of discrimination, Mr. Lanier, if they are restored to full rights and then turn around and say that the legislature could say they couldn't carry guns.

Mr. Lanier That was exactly my point. Wouldn't we, by that, then be creating a first class of citizenship and perhaps a second class of citizenship?

Mr. Drew Well, I don't know whether I quite understand you. In other words, if we leave the word "rights," which I am very much opposed to, I don't think you could make any distinguishing laws at all between those who may have been convicted and those who had not been convicted.

Mr. Lanier But, is it your position, and don't you think it is the best position that if you are going to reinstate somebody, say like the first offender, let's reinstate him to all rights?

Mr. Drew What does "rights" mean, Mr. Lanier? I think Mr. Denney brought up a very good question, that if you or I were convicted of a felony and

forfeited our right to practice law, would we automatically be reinstated? I think it's too broad a term. I ask that you defeat this amendment.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I rise in support of the amendment for the following reasons: (1) I have had much experience in dealing with criminals, or ex-criminals, or ex-convicts, suppose I say, Let me see, what has happened under the terms of our laws in the State of Louisiana. The fact that crime is very high among us is due partly to those laws which I consider archaic. For example, if a man serves his time in Angola, when he comes out his record follows him. Now, I'm not particular about whether his citizenship is restored for the purpose of voting and/or running for office. I'm not concerned about that kind of man because usually the convict, the one who gets caught up in the law and goes to Angola is not a good citizen, or he may not be a voter, etc., etc., but he has to work. What happens is, once the judge sentences him for a felony, to Angola he is convicted for life, or long time, and barred from employment. Now let me give you one brief example. I had a man to come to me who had been to Angola. He reapplied to his former employer for work. The former employer told him, "No, you are an ex-con. I can't employ you." He goes somewhere else for three or four times and he informs them because all most applications, either under civil service—state, federal, or local—and private employers have a question, "Are you, or have you ever been convicted of a felony and served time, etc., etc.?" He tells the truth. He doesn't get the job. Then, he decides to change his mind and lie, but they find out anyway after he is employed one or two weeks, or one or two days. So, the man is thrown back on the street, impossible for him to get a job, and what he does? He commits another crime, and that's why we have so many repeaters. So, I appeal to you to adopt this amendment and make it possible for an ex-convict at least to get a job so he can work and support himself and his family. He will not be forced back into crime and go back to Angola within the next six months. That's why you have so many thousands in the jails and in Angola in this state now. Thank you.

Questions

Mr. Riecke Reverend Alexander, if this Derbes amendment was passed, that wouldn't permit that man seeking employment to tell me, as an employer, that he has never been convicted if he's been convicted four or five times, would it?

Mr. Alexander No, but I tell you what it would do, Mr. Riecke. It would...most employers, especially the various civil service systems investigating, they would not find this in his record.

Mr. Riecke I know, but if he told me the truth, he had been convicted whether this amendment passes or not, and that wouldn't preclude my employing him.

Mr. Alexander That may be true, Mr. Riecke.

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I'm going to be brief, and at the conclusion of what I have to say, I am going to move the previous question. Let me make sure that there is no misunderstanding about what this particular amendment does. All it does, and I think Mr. Derbes has already said it, but I think it needs to be said again, is to say that after a person has served his time in the penitentiary or in jail, or after he has served his period of probation and/or parole, after, so to speak, his debt fully to society has been paid, society will then say, "Okay, we're going to restore to you a couple of limited rights, the rights that you, as a citizen have, and that is the right to vote and the right

...with them. It doesn't say that. It doesn't say that you can't be prosecuted as a second, third, fourth, or fifth offender in the future if you commit other offenses. It doesn't say that you are pardoned for the crime that you have committed and that your slate has been wiped clean. It simply says that we're going to give you back the minimum things that have been taken from you because you have earned them. You have served your time or you have responded to the duties and obligations imposed upon you by the order of probation or the order of parole, depending upon what the case may be. This gives some additional hope to the man who has really tried to and has done what society says he must do, and that is pay his debt. He's done it. Now, that's all that this amendment does. Mr. Chairman, if there are no further speakers, I would like to move the previous question.

Questions

Mr. Tapper If you answer this question, I may not have to take up the time of the convention to speak. Mr. Gravel, isn't it a fact Mr. Drew made a statement a while ago that if we adopt this we are going to undo what we did with his amendment? Isn't it a fact, however, that Mr. Drew's amendment rather than undo what we did with his amendment, one that spoke on the amendment and there was no opposing side put forth on that amendment?

Mr. Gravel Well, that's correct. I think Mr. Drew had put something additional into the concept that doesn't belong there. What this amendment does not do, and I may have misunderstood Mr. Drew, but I thought he said that this would restore the language of the committee to the section. It does not; it limits the language of the committee. I'm not suggesting that he said that, but I thought he may have said it—somebody may have said it. It limits the language of the committee very appreciably, by saying that... instead of saying that "full rights shall be restored," by saying that "only the limited rights of citizenship shall be restored." So, to that extent it's a rather substantial departure from the broad sweep of the committee language.

Mr. Willis Mr. Gravel, this one is friendly, or these are friendly. Does not... this amendment does not give the former criminals now citizens to be again, a medal. It just gives them back what is tantamount to or in parallel, corruption of blood.

Mr. Gravel It gives them a taint of respectability, you are right.

Mr. Willis Thank you. Now, about this argument that in adverse to this proposition under consideration, the argument is four-time loser. Well now, what say you to a judge that a man can lose four times in his lifetime? What do you think about that judge?

Mr. Gravel Mr. Willis, don't ask me about the judges, I'm in enough trouble with them already, please.

Mr. Drew Mr. Gravel, did you understand that when I was referring to the committee proposal that I was referring to the multiple offender portion? Mr. amendment provided this applied to first offenders, the committee proposal, regardless of the number of convictions. Did you understand that was what I was speaking of about the committee proposal?

Mr. Gravel I think I understood you. I think I was referring to the multiple offender portion? Mr. amendment restores the original committee proposal. I don't think it does. I don't think that's what you... probably that's not what you said. I perhaps misunderstood you, Mr. Drew.

Section. Section passed: 88-16.
Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter The next section, Section 19. Right to Vote

Section 19. No person eighteen years of age or older who is a citizen and resident of the state shall be denied the right to register and to vote, except that this right may be suspended while a person is interdicted and judicially declared mentally incompetent, or under an order of imprisonment for conviction of a felony.

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, there are three things here that we essentially did after a lot of hearings of the people with the registration for voters and several other women who were interested in the mentally incompetent, and what have you. First of all, we constitutionalized that if you are eighteen years of age or older, you have the right to vote, and if you are a citizen and resident of this state it shall not be denied the right to you to register and to vote. In the past there has been some problem that you had the right to vote, but it appeared that registering was a privilege and that it was a lot harder to do than it should have been. Therefore, your right was denied. The other thing that we do is, of course, that it makes two exceptions only with respect to not being able to vote—interdicted, which means to be in an institution and declared by a judge to be incompetent and/or judicially declared mentally incompetent because the distinction sometimes between an interdiction proceeding that is brought by members of a family and sometimes a judicially committed person being judicially committed for a certain amount of time because maybe of alcoholism, and then gets out. So, that was the reason that we used those terms. The others that are under an order of imprisonment for conviction of a felony means that if you are under an order of imprisonment, and not necessarily in the pen, that your right to vote is suspended during that particular term that you may be suspended from the prison but actually under an order of imprisonment. Now, let me tell you just one thing, there are going to be amendments come up that I know of, that Mr. Ambrose Landry is interested in, that tries to say that at no time in the future, ever, will the legislature be able to lower the age from eighteen to vote. You must understand, and this is extremely important, that we say if you are eighteen or older, you have the absolute right to register and vote if you are a citizen and a resident and you don't have any of these other disqualifications. But we leave it to the legislature because we don't negate it, that in the future time, ten, fifteen, twenty years from now, it may lower the age of voting to seventeen, and you may then register and vote at that time. Mr. Landry and them have an amendment that's going to be coming up that will say that you will never be able to lower that age. They are going to constitutionalize it at eighteen and the legislature may never change it. I urge the adoption of this amendment and I will submit to any questions... I mean the adoption of the section, and will submit to any questions.

Questions

Mr. Derbes Mr. Roy, the phrase "interdicted and judicially declared mentally incompetent," the construction indicates... would indicate that they are different qualities or different events. I don't understand the difference. Isn't interdiction a declaration of incompetence?

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Mr. Roy Mr. Derbes, interdiction is a formal hearing that requires notice and what have you, whereas to be judicially declared mentally incompetent may not. You may be sentenced without the hearing to an institution until there is such a hearing.

Mr. Derbes A commitment, a judicial commitment which is what I think you are referring to is not necessarily a declaration of incompetence.

Mr. Roy That's right.

Mr. Derbes But, under these conditions, you have to be both interdicted and judicially...

Mr. Roy "Judicially declared mentally incompetent." You can be interdicted for non-mental reasons. You can be interdicted because you can't carry on your business at all, but that doesn't make you mentally incompetent. Therefore, the committee, in studying this, said that you had to be declared judicially mentally incompetent.

Mr. Derbes But, what I'm trying to tell you is that interdiction is a declaration... is a judicial declaration of incompetence and what you are really saying is "interdicted and judicially committed." I think that's what you are really saying.

Mr. Roy No, no, because you may not necessarily be committed anywhere, but you could be "judicially declared mentally incompetent."

Mr. Champagne Mr. Roy, this section would do away with any residential requirements?

Mr. Roy No, sir, it does not. Well let me say... I can answer this. We followed what the United States Courts have said that you have got to be a resident of the state and a citizen.

Mr. Champagne Well, I mean like local you couldn't have anything...

Mr. Roy Sir.

Mr. Champagne In other words if I moved into town today I could go register and vote.

Mr. Roy You have the absolute right to register if you move into a town, but you have to be there thirty days before you can vote and we can't do anything about that, Mr. Champagne, that's the law.

Mr. Conroy I just didn't understand the last part of what you just said, Mr. Roy. You said that you would have to be there for thirty days but that's not in this provision. This would permit you immediately to vote, doesn't it?

Mr. Roy No, it says that...

Mr. Conroy "...no person eighteen years of age who is a resident of the state shall be denied the right to register and to vote." So that you couldn't even have the thirty day limitation under this provision, could you?

Mr. Roy Well, let me understand you. You have got to... the practical matter, Mr. Landry says it takes thirty days to do both but in any event you are under the present Supreme Court rules. Once you move to a place you may register to vote but cannot vote for thirty days.

Mr. Conroy But it seems to me, as I said, that this provision would preclude that because this says if you've been a resident... if you are a resident at all of the state you can't be denied the right to register and vote, even the day of the election, the way this is worded as I would read it.

Vote Declaration Lobby in the Chair

Mr. Willis Mr. Roy, I... we just left the last sentence in the previous Section 18 and if you look at the last independent clause of the section under consideration, 19, don't you think that we should use similar language instead of "under order of imprisonment and conviction of a felony for this reason"? I don't understand if that last clause in the section under consideration means that as soon as he gets out of Angola he can register to vote. In the previous section means when he gets out of Angola that doesn't end that he has to end his supervision. You see what I mean? You think that something should be done to make those fit hand in glove?

Mr. Roy Well, I think that's right and longer...

Mr. Willis Well, he could be under probation.

Mr. Roy I don't know if I understand. Let me tell what we have attempted to say. That while you are under an order of imprisonment even if you are on probation or suspension for the conviction of a felony you may not vote, but once that probation and suspension ends, even though you were under the order of imprisonment at all times, then you are entitled to vote irrespective of whether you are...

Mr. Willis I believe that's what you wanted to say, but in view of what we said in the last sentence of the previous article, I believe some adjustment should be made to make them coincide don't you see?

Mr. Roy I don't see it, but...

Mr. Jenkins Chris, with regard to the question regarding whether or not there could be residency requirements to register and to vote. Isn't it true that right now there is, in fact, no real residency requirement under federal law to either to register or to vote? There is only an administrative delay which is allowed after registration before he can vote, but there is no residency requirement at all. As soon as you become a citizen you automatically can register and vote.

Mr. Roy That's correct, Mr. Jenkins, and that's what we are faced with and the Supreme Court has allowed us in the south, in Louisiana, thirty days and the rest of the states can make you be there fifty days before you can vote.

Mr. O'Neill Mr. Roy, hasn't history shown in the United States that various moves have proceeded a long time to enfranchise more groups of voters for instance, blacks after the Civil War, women in the early or 1919 or so, now the eighteen year olds and that in the future they might want to enfranchise even more younger people.

Mr. Roy That's correct and that's why we have not constitutionalized it at eighteen alone, only that you can't be stopped.

Mr. Denberry Mr. Roy, in connection with that very explanation but also, in connection with Mr. Derbes question, it is possible I take it that the legislature may sometime in the future provide for the judicial declaration of mental incompetence without interdiction?

Mr. Roy That's correct.

Mr. Jenkins I think I would like to see something saying "interdicted and judicially declared mentally incompetent." you are freezing something into the constitution unnecessarily. If you would just remove "interdicted and" wouldn't you get exactly the same result and still not freeze anything into the constitution?

Mr. Roy Mr. Denberry, you think it should say...

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have an ex parte here and to declare somebody mentally incompetent and may deprive him of his right to vote at that time and then the election is over, then later he is free and he can vote and he never should have been denied that right to vote. As far as I personally feel, I wouldn't have anything in here that way you know because you get into the problems of where you have an interdicted person who is really capable but he is being denied the right to vote under certain circumstances. We were worried that if we didn't have it like we did all the people who were in institutions could demand on the day of the election that the state furnish some type or method of transportation to get them to the voting precinct since we would be giving them the right to vote unless we had the exception "unless interdicted and judicially declared incompetent."

Mr. Denberry But isn't it true, Mr. Roy, that a lot of people are in state mental institutions who have never been interdicted?

Mr. Roy That's correct, but the only thing is...

Mr. Denberry Therefore, those who are in mental institutions and are not interdicted, under your theory could then demand transportation to vote.

Mr. Roy Moise, I think, I think you are right but the point is that we don't deal with the others necessarily like these folks, because we are not excepting them out of it.

Mr. Denberry O.K.

Mr. Roy We have considered it and you get to a point where you just get into you know, kind of a little problem there.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, I have looked over these three amendments that are before us; they do not seem to have a great deal of substance to them...I'm just...Mr. Lanier seems to disagree...I was going to suggest that we move the previous question on this section, but if you insist on the amendments...why, I will restrain myself.

Amendment

Mr. Hardin [Assistant Clerk] A set sent up by Delegates [A.] Landry and others.

Amendment No. 1. On page 6, delete lines 14 through 16, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 19. Every citizen of the state, upon reaching eighteen years of age shall have the right to register and vote, except that this right may be sus-"

Explanation

Mr. A. Landry Mr. Chairman, ladies and gentlemen of the convention, this is a technical amendment. It is technical in such a way that we are not going to leave any work for the Committee on Style and Drafting. All that my amendment does is provide that a person eighteen years of age upon reaching that age shall have the committee is giving constitutional protection to a citizen eighteen years or older. But, if the legislature would reduce the age of voting as low as twelve or thirteen or fourteen or fifteen or you pick out a figure out of thin air, these people would not have constitutional protection. Personally I don't believe that even this belongs in the Bill of Rights. I think it should be in suffrage and elections, but we take

it where we find it and so I ask you to adopt my amendment which constitutionally protects every citizen of the State of Louisiana upon reaching the age of eighteen to register and to vote.

Questions

Mr. Roy Mr. Landry, how can you at all argue that you are not constitutionally protecting people under eighteen when you are specifically saying that you have got to be eighteen in the future to vote?

Mr. [A.] Landry I think you heard me say, Roy, if you felt that you wanted to lower the voting age then vote against my amendment. If you feel you want to see it at eighteen, then vote for my amendment.

Mr. Roy In other words, if the legislature in the future feel that it is going to lower it to maybe seventeen it may do so under the committee proposal but under yours it may never do so.

Mr. [A.] Landry That is correct, Mr. Roy.

Mr. Champagne Mr. Landry, I seem to be...would you say that you are taking a positive approach to this thing rather than a negative one?

Mr. [A.] Landry That is correct. I positively see the eighteen years of age as a person who can register and vote.

Mr. Jenkins Mr. Landry, what in your proposal forbids the legislature from lowering the age? I don't see anything that forbids it.

Mr. [A.] Landry I think that if you read it, it is self-explanatory. It says "every citizen in the state upon reaching the age of eighteen shall have the right to register and vote." Nobody else.

Mr. Jenkins No, but you protect the right of every person who is eighteen to register and vote, but you don't forbid in here the legislature from giving that right to people who are under eighteen, do you, any more than the committee proposal does?

Mr. [A.] Landry I think I do, Mr. Jenkins, that's a matter of opinion.

Mr. Jenkins I mean I don't disagree with your premise, but I don't see how that yours is any different from the committee's, is it, in that regard?

Mr. [A.] Landry I don't think the legislature would have any problem with it.

Mr. A. Jackson Mr. Landry, did you know that the committee felt that this section was necessary for the Bill of Rights, because we consider the right to vote an individual right and not a privilege anymore?

Mr. [A.] Landry I understand that's what the committee's intention was, but I believe that under my amendment it says "persons upon reaching the age of eighteen shall have the right." We didn't use the word "may".

Mr. A. Jackson I was questioning your statement that this did not belong in the Bill of Rights, did you know?

Mr. [A.] Landry It is a matter of opinion.

Mr. Lanier Mr. Landry, did you know that I wanted to ask you a couple of friendly questions?

Mr. [A.] Landry As a coauthor, I imagine that is what you intended.

Mr. Lanier With reference to this business about the privilege of the right to vote. Under the committee proposal would you agree that those who are eighteen years or older would have a constitutional

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right to vote?

Mr. [A.] Landry That is correct.

Mr. Lanier But, if the legislature were to reduce the voting age those who were in the class that were under eighteen years of age would not have a constitutional right to vote, but would only have the privilege granted to them by the legislature to vote.

Mr. [A.] Landry That is correct unless...it would be an amendment to the constitution.

Mr. Lanier So under that category in the total class of persons who would be entitled to vote some would be privileged and some would have a right, is that correct?

Mr. [A.] Landry That's correct.

Mr. Lanier Do you think that is a very good situation for us to create in our constitution?

Mr. [A.] Landry I don't think so, that is why I have the amendment.

Mr. Stinson Mr. Landry, I believe you made the statement that the committee wanted possibly the legislature to let those under eighteen vote in some future date. You know that I am a member of the committee, don't you?

Mr. [A.] Landry Yes, sir.

Mr. Stinson Do you know that I did not intend to do that and that I am not opposed to the legislature having that right?

Mr. [A.] Landry I understand that, Mr. Stinson, and may I say that...I don't know what the intention was, but the way it was drafted, it could happen.

Mr. Stinson Now, I am concerned about yours though. I am in favor of it, I believe, except you use the words "every citizen." Now you don't even require them to be a resident. Don't you think that we would have a problem there?

Mr. [A.] Landry Mr. Stinson, I think that is very easily taken care of in the situation. I think you have no doubt before this is all over with, you will have an election code that will take care of all these things. Because of the federal court ruling you don't know where you are as far as registering is concerned or domiciliary is concerned. I heard mentioned awhile ago that a person can come in thirty days, under the present federal voting rights act he can come in, register, providing he has been in the area over thirty days, where he can only vote on federal issues and not on local government issues.

Mr. Hilly Mr. Landry, if I read your amendment correctly, I believe what you do in contrast to what was intended by the committee, is that you could go back to requiring a person to pass a test before he could be registered to vote, under the language of your amendment.

Mr. [A.] Landry If you would want to go to court to try to get the federal government to pass, but I don't think you could, it wouldn't stand up in court.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, I rise in opposition to this amendment. Mr. Bollinger called out that I am the youth representative and that is accurate, that is one reason. What does this amendment do? It freezes forever in the constitution that no person beneath the age of eighteen can vote. The committee proposal states that if you are eighteen years of age or older you can vote. It does not prohibit the legislature at some later date from saying seventeen year olds can vote, it doesn't prohibit it. I don't know what the future holds for this state. The day may come

when the people of this state believe that seventeen year olds can vote or should be allowed to vote or sixteen years olds. Times change, society changes. The flexibility is in the committee proposal. I urge you, stick with the committee proposal on this, defeat this amendment.

Chairman Henry in the Chair

Questions

Mr. De Blieux Mr. Tobias, I would like to ask you and I'd also...if Mr. Landry when he comes back on the closing to answer this statement. What is the real difference between this proposal and the one that is contained in the committee? Neither one of them denies a person the right to vote who is under eighteen. It only guarantees the right, doesn't it, just guarantees the right of a person who is eighteen or older? It doesn't say anything about persons under eighteen that can't vote. If it denied people the right to vote under eighteen, wouldn't it be couched that a person who has not reached the age of eighteen would be allowed to vote?

Mr. Tobias I don't read it that way, Mr. De Blieux.

Mr. De Blieux Well, I just wanted to ask you just because you say eighteen's allowed to vote. What is it that would prevent a person seventeen if the legislature granted them that right, from registering and voting? Find me something in there that would deny that right to a person seventeen under this particular provision of the constitution. This just guarantees the rights of eighteen year olds.

Mr. Tobias I concede it.

Mr. Stinson Mr. Tobias, you said that it forever freezes it...nothing there says you can't amend the constitution and reduce it, is there?

Mr. Tobias No.

Mr. Stinson In other words, if a person under 18 is permitted to vote, the amendment in the bill of Louisiana.

Mr. Tobias Right. But I think that the legislature should be allowed this freedom.

Mr. Lanier I was just thinking Mr. Tobias, would it be possible under the committee proposal that if the legislature or a majority of the legislature felt that it would be advantageous to their reelection possibilities to have sixteen year olds and seventeen year olds to vote that they could reduce the age?

Mr. Tobias The legislature would?

Mr. Lanier Yes. Under the committee proposal.

Mr. Tobias They would provide it by a legislative act, is that?

Mr. Lanier Right. Then if the subsequent legislature thought that that wasn't such a good idea for their reelection chances they could withdraw it again, couldn't they?

Mr. Tobias That is correct.

Mr. Champagne Mr. Tobias, do you agree with me that the average individual on reading either proposal would get the impression that we are talking about eighteen year olds voting?

Mr. Tobias Yes, sir.

Mr. Goldman Mr. Tobias, I think I can understand language, I have read both of these. I can't see any difference in either one of them. I wish somebody would explain the difference to me. I have heard all the discussion, but I still don't see

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any difference.

Mr. Tobias I conceded Mr. De Blieux's point.

Mrs. Zervigon Mr. Tobias, discussing the concept rather than the language right now. Have you met my twelve year old daughter, just about to be thirteen?

Mr. Tobias Once.

Mrs. Zervigon Are you aware that after having heard some of the discussion at this convention, I have a great respect for her understanding of the processes of government and think that maybe she would be a good registered voter? Are you aware that when people put down on thirteen year olds that maybe they haven't met them all?

Mr. Tobias I would say that's an accurate statement.

Mr. Stovall Mr. Chairman, members of the delegation, I believe that the reasonably intelligent members of this convention have made up their minds concerning the slight differences between these two points and I, therefore, move the previous question.

[Previous question ordered. Amendment adopted: 59-40. Motion to reconsider tabled.]

Amendment

Mr. Poynter The distribution copies have not arrived on this set of amendments. Amendments [by Mr. Denberry] read as follows: On page 6, line 17, after the word "is" delete the words "interdicted" and on line 18 after the word "incompetent" insert the words "in an adversary proceeding"

Explanation

Mr. Denberry The purpose of this amendment is that, under the committee proposal as it is presently stated, a person must be interdicted and judicially declared mentally incompetent in order to have his voting rights suspended by the legislature.

It is my understanding from a discussion with the committee members that the purpose of putting the word "interdiction" in there was to guarantee an adversary hearing, because there are some instances in which a person can be declared, judicially declared, mentally incompetent without an adversary proceeding. Those circumstances are such that the committee did not feel that that type person who had been declared mentally incompetent without the right to argue against it should be prohibited from voting. I pointed out to members of the committee that in my question that it was possible that some future time a judicial declaration of mental incompetency would be provided by the legislature following an adversary proceeding and that by leaving the words "interdicted and" in the language it would add the requirement of interdiction. There are some families who don't want to go through the notoriety of interdiction which requires publication in the newspaper and so forth but would be willing to have a member of the family declared judicially incompetent after an adversary proceeding. Certainly those people—the legislature should be permitted to deny the right to vote to those people. I suppose you would call this a technical amendment, but it is a substantial change to that extent.

Questions

Mr. Gravel Mr. Denberry, your amendment would add, as I understand it...

Mr. Denberry It would delete "as interdicted." Mr. Gravel Would read "while a person is judicially declared mentally incompetent in an adversary proceeding."

Mr. Gravel All right, but aren't there many, many instances where the determination of mental incompetency are made unilaterally by the court based upon the facts and circumstances that are presented to the court and there really is no actual adversary proceeding, as such?

Mr. Denberry That is quite correct and the reason I put "adversary proceeding" in there is that the committee indicated to me that they placed an interdiction proceeding to guarantee an adversary proceeding.

Mr. Gravel Well, are you meaning...do you mean to say that unless there was, let's say a lawyer on both sides, so to speak, which is what I understand an adversary proceeding to be...

Mr. Denberry That's right.

Mr. Gravel ...that then this particular provision would not apply?

Mr. Denberry Yes, sir. At least a curator appointed to represent the person who is charged or the defendant in a suit, to declare mental incompetence.

Mr. Gravel But the fact that a curator, isn't it correct that the fact that a curator is appointed, doesn't guarantee an adversary proceeding? That is mainly done for the purpose of obtaining service, substituted type service, upon the...

Mr. Denberry Well, I wasn't thinking about a substituted service curator, Mr. Gravel.

Mr. Gravel Ordinarily I agree with you but I think you have injected something here that really is very confusing.

Mr. Denberry I won't argue the point. It is confusing but I felt that if you left the words "interdicted and judicially declared" that you would have a lot of people voting who shouldn't vote and you could not take those rights away from them.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the committee, I just wanted to object to this because there may be some occasions when the legislature might permit the declaration of judicial incompetency that you wouldn't have an adversary proceeding. At the present time I don't know of any, but I don't think that we ought to try to place these kind of restrictions in the constitution. I don't think that this would be a good amendment. I had thought about proposing an amendment to take out the word "and" because as it is stated in the provision right now you had to be interdicted and judicially declared mentally incompetent in order to be deprived of the right to vote. I think possibly if we change that word "and" to "or" we would be accomplishing a whole lot more in this regard, and I certainly think that this would be a bad amendment by absolutely requiring an adversary proceeding to be deprived of the right to vote. I can see instances wherein we may have a provision for a judgment in chambers on some person who is, because of disabilities would be interdicted for a period of time, to permit somebody else to carry on his affairs of business and I certainly think that this would be a bad amendment in that regard insofar as this particular provision is concerned, and I, therefore, oppose the amendment.

[Previous question ordered. Amendment proposed: 59-40. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. De Blieux]. On page 6, line 17, after the word "is" delete the word "and" and insert in lieu thereof the word "or"

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that's a legal term under our law, it's interdiction, and it says mentally interdicted means for mental purposes.

Mr. Arnette Mr. Stinson, I feel for the...for what you are trying to accomplish here, but don't you mean interdicted for mental reasons or for mental cause or something like this?

Mr. Stinson If you want to make a technical amendment, I have no prejudice and no objection...

Mr. Arnette If you can do that, I would like for you to go ahead and do that, and that would solve a lot of problems.

Mr. Stinson Mr. Clerk, can you say that "interdicted for mental reasons," can you make such a technical amendment?

Mr. Henry You want to withdraw your amendment?

Mr. Stinson No, if you make a technical amendment up here, it says, "man who is mentally interdicted",...

Mine says "mentally interdicted," and an objection has been raised and they would like "interdicted for mental incompetency," for which I have no objection and I think possibly would clarify...

[Amendment withdrawn and resubmitted with corrections.]

Amendment

Mr. Poynter Same language, page 6, line 17 after the word "is" delete the remainder of the line and insert in lieu, thereof the following "interdicted for mental incompetency or judicially committed to a mental institution,".

Mr. Henry All right.

Would you yield to a question from Justice Tate? The gentleman yields.

Mr. Stinson I'll be glad to except the members of the Supreme Court from that, if they wish?

Mr. Tate No, this is just puzzlement.

Questions

Mr. Tate Mr. Stinson, does that mean, for instance, those people that have those little ex parte interdictions, for instance for nervous breakdowns to go to Pineville, they come home on weekends. All they are is nervous.

Mr. Stinson Yes, sir.

Mr. Tate Do they lose their right to vote?

Mr. Stinson Until they are released and then automatically you've got a discharge and says, "you are now competent, you can go home." That's what the institution gives them.

Mr. Tate But, how about a fellow like me that ought to be?

Never mind, I withdraw that question?

Mr. Kelly Mr. Stinson, there are people judicially committed; say that are alcoholics, and so forth, and they go down to Pineville, or down further south and they stay there two or three days, and they are out and back and forth...and is this amendment going to deny these people the right to vote?

Mr. Stinson As long as they were judicially committed there, now if they are released to go home, cured, they get a release and they are not judicially committed.

Mr. A. Landry Mr. Stinson, as a layman, I think a lot of laymen are in this group, isn't it so that interdicted means a judicial interdiction and not just a commitment by the judge to send someone to

a mental hospital for just maybe a month or so?

Mr. Stinson Yes, sir.

Mr. A. Landry So that even though he would be committed temporarily to a mental hospital that would not deny him the right to vote. Is that correct?

Mr. Stinson And, also, Mr. Kelly, in answer to yours, Judge Dennis pointed out a matter that most of those that want to go there for the alcoholic cure, they voluntarily go. They are not judicially committed. They go there, and when they get through with the rest cure, they are out and there's...

[Previous Question ordered. Record to be updated. Amendment resubmitted. 38-63. Motion to reconsider tabled. Previous question referred to the motion.]

Closing

Mr. Stinson I want to warn you, if we pass this, every person in every mental institution is going to be able to vote and mandamus to come out, and this is serious. We want to go home, and I think we should certainly not pass something like this...

[Motion passed. 38-63. Motion to reconsider tabled.]

REPORTS OF COMMITTEES

[I Journal 461-463]

INTRODUCTIONS OF RESOLUTIONS

[I Journal 463]

Announcements

[I Journal 463]

[Adjournment to 9:00 o'clock a.m., Wednesday, September 12, 1973.]

Wednesday, September 12, 1973

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

of these hours, or fifteen percent, were worked on the regular workday week which you would normally encounter. They deserve our praise and our gratitude, and in closing, I may tell you that I commend this convention and I think the people of this state will be gratified to know that the convention is on the right track. Thank you.

RESOLUTIONS ON SECOND READING AND REFERRAL

UNFINISHED BUSINESS

THIRD READING AND FINAL PASSAGE

Mr. Poynter: Committee Proposal No. 25 introduced by [redacted] Phnse Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections. It's a substitute for Committee Proposal No. 2 by the same gentleman on behalf of the committee.

A proposal to provide a Preamble and a Declaration of Rights to the constitution.

The status of the proposal at this date is the convention has adopted the Preamble, Sections 1 through 6 as amended, has deleted Section 7 and Section 8, and thereafter has adopted as amended Sections 9 through 19, and presently has under consideration Section 20, the next section to be considered--"The Right to Keep and Bear Arms."

Reading of the Section

Mr. Poynter "Section 20. Right to Keep and Bear Arms."

Section 20. "The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons."

Exploring...

Mr. Juariso: I think you are very clear, "the right to each citizen to keep and bear arms shall not be abridged, but this shall not prevent the passage of laws to prohibit the carrying of concealed weapons." I think that the 21st Amendment and I think the only difference is that it had reference to the militia, and of course, the militia had to do with historical significance insofar as the Continental Congress. The state is not to be a party to any banning and I think that that wasn't needed. Now, I had testimony from the people in the National Rifle Association and groups of that sort, and I think we reached compromise as to what we felt would protect the individual insofar as criminal activity and not as to the fact that we have a right to possess and have arms and ammunition. I'll yield to any ques-

Mr. Champagne Original: I think your committee had some good ammunition. I think you left some out. you left "ammunition" out?

Mr. Guarisco Well, we thought I was tacitly understood that you had arms. It's always been interpreted that way, so we thought we were in the clear.

I urge the favorable adoption of this section.

Amendments

Mr. Dwyer, Assistant Secretary for External Affairs
and many coauthors.

the words "carrying of" delete "con-" and delete on line 24 in its entirety and insert in lieu thereof the following: "weapons concealed on the person."

require the licensing or registration or impose special taxation on the ownership or possession of firearms or ammunition."

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Mr. Avant. Mr. Chairman and fellow delegates, first, I would like to ask that these amendments which are divisible be divided.

Now, the present constitution embodies substantially the same language as the committee proposal with the exception as explained to you by Mr. Guarisco of the reference to the militia. In essence, they both provide that the right of a citizen to keep and bear arms shall not be abridged, but that this provision does not prevent the passage of laws which would prohibit the carrying of concealed weapons. Now, the purpose of the first amendment to this section is to make it clear that the only law prohibiting concealed weapons will be a law which would prohibit the carrying of weapons concealed upon the person. Now, the reason for that is this, the legislature, of course, so far, under this provision of the Constitution of 1921, has passed no laws with reference to the carrying of concealed weapons except weapons which are concealed upon the person. But, the legislature could, in my opinion and in the opinion of a number of attorneys who have considered this issue, pass laws prohibiting the carrying of concealed weapons in places other than on the person. Specifically, the legislature could constitutionally, under the language of the Committee Proposal and under the Constitution of 1921, pass a law which would prohibit the carrying of a handgun in an automobile, or in a boat, or in an airplane. Similarly, they could prohibit the keeping of a concealed weapon in a business place—such as, behind the counter or under the cash register. Now, other states have passed such laws, most notably of which is the State of New York, which has the most stringent gun regulations and gun control of which I am aware. Many states have laws which prohibit the possession of a handgun or carrying it in the glove compartment or under the seat of an automobile. The purpose of this amendment is to make sure that the legislature of this state does not have the power to regulate the carrying of concealed weapons other than weapons which are concealed on the person, it being the opinion of the speaker and of many, many other citizens of this state that you should have the right to carry a firearm in your automobile, in your boat, or keep one in your place of business. Now, the purpose of Amendment No. 2 is simply this. The ownership or possession of firearms and ammunition is extensively and thoroughly regulated by the federal government. Without a doubt, it will continue to be so regulated and without a doubt, the restrictions will become in the future, in great likelihood, more stringent than they are now. The purpose of this amendment, and I don't want anybody to not understand the purpose of this Amendment No. 2, is to remove the state from the regulation of firearms for the reason that it is an area that is thoroughly regulated by the federal government to the most minute detail. Therefore, the only reason why the state would be interested in regulating or legislating in that area would be to adopt rules and regulations that are more stringent and more restrictive than those which have been enacted by the Congress to which the speaker and many, many other citizens are opposed. I will give you a specific example of the type of thing that we are talking about, under the present federal law, a shotgun with a barrel of less than eighteen inches is an illegal weapon. Under the federal law, a rifle with a barrel of less than sixteen inches is an illegal weapon. Under the state law with respect to rifles, the law is the same. But, under the state law with respect to shotguns, the state law is more stringent than is the federal law because under state law, you have to have a barrel that is at least twenty inches long on a shotgun, or else it is an illegal weapon under state law. It is submitted that there is no need, absolutely no need for a whole maze of conflicting regulations on this subject in an area which is completely, thoroughly regulated by the federal government, has been for many, many years and is going to remain so in the future. Now, there has

been a lot of talk and speech making in this convention on the subject of crime and on the subject of law and order. Well, I want to submit something to you for your consideration. No criminal who is about to commit a crime such as burglary or armed robbery, as he sits there in those final moments before he commits this crime, is thinking about whether the penalty is twenty years, or ninety-nine years, or whether it's with or without parole, or whether he's going to have a trial by jury, or whether it's going to take nine or ten or all of them to convict him. Those are not the things that are going through his mind, and those are not the things that will deter him from committing the crime that he has under contemplation. You know what's going through his mind is the fact that that storeowner, or that homeowner, or that citizen is with him, probably armed and prepared to defend himself. That's what he's thinking about—not "Am I going to get caught next week or next month and be tried and maybe go to Angola?" The thing that he is concerned about primarily at that moment is, "Am I going to come out of this little venture alive?" Now, you take away, you take away from the citizen, the decent, average, law-abiding citizen, the good state, the good citizen, the right to defend himself, and then you talk about law and order. You see how much law and order you have. You see what happens to your crime rate, and I can refer you to nothing more specific than the State of New York which, while having the most stringent weapons control laws in the United States, has the greatest, or one of the greatest crime rates in the United States, and it's rapidly deteriorating every day. So, I urge you, I urge you to adopt both of these amendments.

Questions

Mr. O'Neill. Mr. Avant, you were appointed to this convention, correct, sir?

Mr. Avant. Correct.

Mr. O'Neill. Who were you appointed to represent?

Mr. Avant. Wildlife and Conservation.

Mr. O'Neill. Don't you think that they would favor this amendment if those people were here to vote on it this morning?

Mr. Avant. I think they would.

Mr. O'Neill. Do you think that the laws of the United States are restrictive enough on gun control so that we need not impose any further restrictions on the state level?

Mr. Avant. I certainly do.

Mr. Tobias. Jack, I call you to the attention of the committee language which reads, "The right of each citizen to keep and bear arms shall not be abridged," and then it continues. In Section 18 of our committee proposal, this proposal, we adopted a provision that reads as follows: "Full rights of citizenship shall be restored upon termination of state or federal supervision following conviction of any offense." Would that permit a former felon to carry firearms, under your interpretation?

Mr. Avant. I don't think so because the right to citizenship that is referred to in that section are the rights to vote and the restoration of civil liberties. There is a federal law on the subject with which I am most familiar that prohibits the possession or transportation of a firearm by an ex-convict.

Mr. Tobias. Mr. Avant, my next question is this. Presently, New Orleans has a firearm registration ordinance which would... which requires the registration of handguns. This would, in effect, outlaw that.

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Mr. Tobias . . .

Mr. Tobias Do you believe that some sort of firearm, handgun concealed weapon type of legislation is necessary in a large metropolitan area?

Mr. Avant I think that the present law which prohibits the carrying of a handgun concealed on one's person is a good law. It would not be affected by this provision, Mr. Tobias, in a large municipal area or in the middle of the Atchafalaya Basin.

Mr. Willis Mr. Avant, what is the only purpose of a weapon or a firearm? The only thing a weapon or a firearm, that is a gun or a rifle, can do is kill, isn't that correct?

Mr. Avant Yes.

Mr. Willis You can't do anything else with it.

Mr. Avant You can shoot targets with it, if you

Mr. Willis Well, the primary purpose of it is to, if you shoot targets, is to be skillful at killing, isn't that correct?

Mr. Avant . . . the use of the weapon, yes, sir.

Mr. Willis Well, if we ultimately agree that the use of the weapon is to kill, then it is to kill. So, we go from there. Now, would the omission of the second amendment that you have, "place the registration of weapons" and so forth, would not the omission allow the legislature to flex with the demand of the times?

Mr. Avant It would allow the legislature to pass a statute which says you cannot keep a firearm in your automobile, you cannot keep one in your boat, and you cannot keep one behind the counter in your business place. That's the purpose of the amendment. It would give them that much flexibility, yes, sir.

Mr. Lennox Mr. Avant, my one or two questions deal solely with the so-called "Saturday night special." I'd like to hear your views on why there should not be some registration device for that particular type of handgun.

Mr. Avant I see no reason why a so-called "Saturday night special" should be registered when a Smith and Wesson snub-nosed 38 revolver would not be registered. Now, the so-called "Saturday night special," Mr. Lennox, is a cheaply made, imported, foreign handgun. It is easily concealed, but it is no more easily concealed than many of the American handguns. But, most of those so-called "Saturday night specials" are just as dangerous to the shooter as they are to the shootee because they have absolutely no quality to them at all, and they are made to be mass-produced very cheaply so that people can get ahead to them.

Mr. Lennox Why is it that your amendment would oppose the registration of any concealable handgun, be it a revolver or a "Saturday night special"? You must have some valid reason for proposing. . .

Mr. Avant Yes, sir, there is. There is a reason, and the reason is this. I believe it was in Greece when the military junta took over, over there. All weapons in Greece had been registered for years. The first thing they did was round up the owner of every registered weapon and take his weapons from him.

Mr. Lennox My final question: Do you know that the Parish of Orleans has a handgun registration ordinance which, in fact, has been used as an effective tool in apprehending criminals or people charged with violent crimes?

Mr. Avant I understand that there is such an ordinance. To what extent it's been effective, I don't know. But, my guess would be that it has had no appreciable effect on the crime rate in the city of New Orleans, based upon what I read in the newspaper.

Mr. Lennox In any event, your proposal, if adopted by the convention, would negate that local ordinance.

Further Discussion

Mr. Burson Mr. Chairman, ladies and gentlemen of the convention, I ask that my name be taken off this amendment, although it was originally on, because as so many times in this convention, I found that when I did my homework afterward that I was wrong. I think I would be wrong in sponsoring this amendment for one simple reason. We would, in my view, abrogate present, existing state laws and, as Mr. Lennox has pointed out, a city ordinance in the city of New Orleans regulating the carrying of handguns. Now the state laws involve more than that. I asked the staff just to sketch briefly what they do involve, and they involve primarily the defining of firearms which cannot be carried by a private citizen, including primarily, sawed-off shotguns or shotguns with a barrel less than so many inches in length, machine guns, silencers for pistols, etc. Now I have taken the position throughout here that when we were dealing in the area of criminal procedure, that we had not been sent here as a super legislature to change existing state law without proper study. I feel that I would be totally inconsistent to have taken that position with regard to criminal procedure and then to turn around here in the case of substantive criminal law and take the position that I want to abrogate it. I would be the last one in the district that I come from, where most farmers ride around legally with shotguns on a rack in the back of their pickup trucks to want to do anything to limit in any way the carrying of firearms by people legally and under the present law.

But, I do not feel that we would be warranted in abrogating present state legislation and present city ordinances in the city of New Orleans on this subject. I must confess that I have some grave personal reservations also, about a prohibition which would absolutely prohibit the legislature in some future time from requiring some sort of licensing or registration of some types of firearms. My own personal belief is that while I may have been an impressionable child when I saw it, that the old sheriff and the cowboy shows that I saw when I was a child who required everybody to check their six-shooters in when they came into town, probably had a pretty good idea. And my own personal opinion is that there have been more murders and man-slaughters generated in this state or in this country by people packing pistols around in bar-rooms than anything I know. I don't know a better way to turn a barroom brawl into a killing than that. But that's my own personal belief. I simply mention it to give you some indication, perhaps of why I reconsidered this matter.

The most important fact to me is that we have present state law on the books and we have a present city ordinance in the city of New Orleans which would be abrogated by the language, particularly of the second amendment offered here.

Further Discussion

Mr. Tapper Mr. Chairman and fellow delegates, I rise in support of the amendment. I'd like to

weapons hasn't curtailed murders in this country, believe the record will reflect that there have

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If we restrict the possession of firearms and weapons for the defense of the innocent people so that a man cannot have a weapon in his business place to protect himself, so that you cannot have a weapon in your home to protect yourself, we are not fooling anybody, ladies and gentlemen. Those people who are going to kill are going to carry the weapons, who are going to carry them for unlawful purposes, will not register them. They are not the ones that you are going to control with this law. You are going to control the innocent law-abiding citizens with this law. Let's make no mistake about it. Let's don't hide our heads in the sand, talk about the Western type of turning your gun in when you come into town. This was a time, ladies and gentlemen, when there was honor among men. Today, we have killing and killing and killing on the street, and that killing is being done by those who will not register firearms.

I urge that you adopt this amendment.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, I rise to encourage you to oppose these two amendments that have been presented to us; because these amendments make it more difficult for us to maintain law and order and for the state legislature to respond to emerging situations in our state. Later on, Mr. Burson has an amendment that at least leaves us where we were in the 1921 Constitution. And I have an amendment which says that the control of firearms might be subject to the police power of the state.

So I encourage you to vote against these two amendments. It seems to me, ladies and gentlemen, that we are dealing here with something that gets to the very heart of whether or not we as a convention are going to maintain a certain integrity and independence, or whether or not we are going to be unduly influenced by some special interest group in the state. It is a question of whether or not we are going to provide a constitution that might respond to the common good rather than the wishes of some particular special interest. It's a question of whether or not we are going to maintain some flexibility and permit the legislature to respond to whatever the need might be in a responsible manner.

I submit to you that these two amendments are in opposition to the maintenance of law and order, because they simply provide that no restriction could ever be placed on any firearm. I'd like to say to you that Mr. Avant, in appealing to you for support of these two amendments, has stated that a store owner might be restricted in maintaining a firearm. This amendment does not in any way limit a store owner from protecting himself. Mr. Avant seemed to imply that if the store owner had his firearm registered, that this in some way would limit his ability to take care of himself. Mr. Tapper says that such registration at some future time might not limit murders; that the criminals would still... would not register. I think we realize that if the legislature at some future time saw fit to pass such limiting legislation, that it would require that future sales of firearms, Mr. Tapper, would be registered. I think all of us here this morning have an appreciation of our wildlife, and we enjoy the sport of hunting, and I certainly am not in favor of our doing anything to limit this fine sport and recreation in our state. But I do feel that it is a mistake to assume that we should not give the legislature the authority and the power at some future time, if it sees fit, to respond to whatever a situation might be.

Therefore, I encourage you to vote against these two amendments and to consider the other amendment that will be presented to us.

Thank you.

Question

Mr. Tapper Reverend Stovall, don't you know that

... of the weapons with which murderers are equipped have first been stolen and have not been purchased, so that they would have been registered?

Mr. Stovall I'm not sure that your assumption is correct, Mr. Tapper. I don't think it is.

Further Discussion

Mr. Casey Mr. Chairman and delegates, I want to oppose this amendment and I do so principally because I am from a municipality that does have an ordinance establishing a handgun registration law. It has been helpful in our area to have an ordinance of this type, and the statistics do show it.

First of all, our statistical information and our registration information goes back to the year 1900, and I know, and our police superintendent has said so on many occasions that a law of this type can be very helpful in tracing down in the apprehension of criminals. Now I know one of the speakers indicated that we have a high crime rate in the city of New Orleans, that we just had three people murdered yesterday; we've had approximately one hundred and sixty-five murders in the city of New Orleans since the first of the year. Maybe, perhaps it could be, possibly there is a chance that we could have a hundred and eighty-five murders instead of a hundred and sixty-five murders, and any registration of weapons of this type that are dangerous to our community could possibly be a real lifesaver for a city such as ours. It's difficult to pinpoint the validity and the helpfulness of a law of this type. But our police department is well satisfied that it has been helpful to them.

I strongly urge the rejection of this amendment, and the adoption of a further amendment of the type that Mr. Burson has introduced which tracks word for word the law as it is today, and therefore, gives the prerogative to the legislature in instances that they might deem necessary and helpful to our community to impose further regulation, whether it be registration or licensing, we don't know today. But the whole key word behind a true constitution is its flexibility, and that's why word is flexibility, and that's all that I urge you to maintain today is that thought in the back of your mind that we should have that flexibility if five years or ten years from now, it's proven that we need some regulation of some kind. That's all I ask you.

Questions

Mr. Avant Mr. Casey, did not the same superintendent of police, to whom you just referred, within the last month publicly state that in his opinion the greatest deterrent to crime was for the average law-abiding citizen to be armed and proficient in the use of that arm?

Mr. Casey I don't think that police superintendent wishes to disarm the public. We're talking about control of arms and knowledge of who possesses those dangerous arms and the ability to trace down arms that are used as an instrument in crime. And I think that same police superintendent would indicate my thoughts to you as being accurate, that he does believe in controls. But granted, I'm not disputing the right to own or bear arms, even.

Mr. Avant Did he not make that statement, though, publicly?

Mr. Casey I don't know, Mr. Avant, but I think he probably did. I won't dispute that. I don't think we disagree on that point.

Mr. Weiss Delegate Casey, isn't it true that many of the stolen weapons, and license and registration laws help the legitimate owners to recover their stolen weapons, would you not say?

Mr. Casey That's certainly a help, and that's the same reason, probably, why we have

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bill, ... of stolen bicycles, for instance, on the LSU campus. And licensing of bicycles is certainly helpful in tracing those bicycles down.

Mr. Weiss And would you say that the licensure and registration laws on weapons impair the rights of citizens to bear arms at all?

Mr. Casey Well, I think maybe, I don't know if you are intending that as a friendly question... I think you are, and I have to be honest with you. I'm not sure that it would. I need maybe a little bit further explanation on it. But I do have to be honest with you, I'm not sure that it really does.

I appreciate your friendly question very much.

Mr. Velazquez Mr. Casey, are you familiar with the statistics that show that if you are going to be shot or killed, statistically speaking, it's much more likely you'll be killed by your wife or by an acquaintance than you will be killed by a shot by a stranger?

Mr. Casey Is your question that statistically that... I didn't understand the first part of your question.

Mr. Velazquez Are you aware of the statistics which show that if you are going to be shot or if you are going to be killed, it's much more likely statistically that you will be shot or killed by your wife or by an acquaintance than you will by a total stranger?

Mr. Casey I don't know if you are trying to give me a message... whether I have that problem or not. But, no, I am not aware of those statistics. But I would imagine that that's correct.

Further Discussion

Mr. Lennox Mr. Chairman and fellow delegates, two or three very brief points on the subject matter. I think there's been some... there have been statements made here that may be somewhat misleading, and I think they should be clarified.

In the first place I see nothing in the committee proposal that in any way restricts the right of any citizen to own and house a firearm. "Item No. 1. The amendment, however, would prohibit the legislature at any time, from consideration of any registration or licensing of handguns." I believe that you should not close the door to that possibility in the future, and I live in an area where the incidence of crime is, perhaps, much higher than in any other place in the State of Louisiana.

Let me give you one example of how registration of handguns would work to the benefit of law enforcement. An individual was arrested in New Orleans, in Orleans Parish, in the act of perpetrating an armed robbery of a service station. He was using, at the time of his arrest, a handgun that had been stolen from a grocer two weeks before who was murdered in the act of armed robbery of his store. The police were thereby able to bring evidence to bear on that individual in connection with a violent crime, which happened two weeks before. Now our law in New Orleans simply says that "any new handgun purchased after a certain date has to be registered with the detective bureau of the New Orleans Police Department." Now, I submit to you that you do not want to close the door irrevocably to the possibility that this might be in the best interest of all the citizens of the state at sometime in the future.

Thank you.

Questions

Mr. [unclear] Mr. Lennox, some people were talking over here and I didn't hear your illustration. Can all hear that very carefully? Some people were

talking and I couldn't hear it all.

Mr. Lennox This is an actual case in point. An individual was arrested in the act of committing armed robbery of a service station operator in Orleans Parish several months ago. The handgun he was using, in this armed robbery, was a gun that had been stolen from a grocer who had been murdered in the act of an armed robbery of his store just two weeks before. Now had that grocer's handgun not been registered, the police could never have connected this individual with the murder of the grocer. Now this evidence may well not be fully conclusive in a court of criminal law. I'm not going to argue that point. But, I state to you that it has been a tool used effectively by the New Orleans Police Department in deterring violent

Mr. Stovall You think these amendments, if they should be passed, would prohibit that kind of maintenance of law and order?

Mr. Lennox I'm going to vote for Amendment No. 1. I'm going to vote against Amendment No. 2.

Mr. Smith Mr. Lennox, don't you think we are going too far when we tell the legislature that they can't pass any law requiring a licensing of weapons?

Mr. Lennox I do indeed, and I think the day may come in Shreveport or other parts of the state where you wish you had such a right.

Mr. Lennox That's precisely my point. I'm going to vote for Amendment No. 1. I'm going to vote against Amendment No. 2.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, our people in this country have three great protections for their freedoms: the jury box, the ballot box and the right to bear arms. If either one of those goes away, then freedom in this country won't last very long. There is no more basic right than the right of self-defense, or self-preservation. A man cannot do away with that right and continue to exist, neither can a people. Some have come up here and talked about the deterrent effect of licensure laws and registration, how it will deter crime, and how it will help us capture criminals. But when we balance the two, on the one hand a well armed citizenry who possesses their weapons and their ammunition free of government control and knowledge; there is hardly a greater deterrent to crime than that. New York State is a perfect example with its stringent gun controls which New York State has had for many, many years, in fact almost fifty years. And yet, just about the highest crime rate in the nation.

The thing the criminals want is a disarmed citizenry, or a citizenry whose right to possess weapons freely is somehow restricted. But when the criminal knows that the citizen has a weapon, and knows how to use it, the criminal is far more reluctant to initiate a crime. One thing about licensure and registration laws of firearms is that such laws make criminals out of law-abiding citizens... out of honest citizens. When a man is arrested for having an unregistered or unlicensed weapon who has committed no crime other than that, who has no evil intent other than to protect himself or his family or his property, to arrest such a man... licensure and registration laws do. They say if you are registered, you are a criminal as though you committed a crime with that weapon. Licensure and registration laws only deter the law-abiding citizen, and they do not deter the law-abiding citizen who will be deterred. Government

should not know about our weapons. I know it's not popular to refer to other countries, but if you look at other countries you will find that where people have lost their freedom, it's always been where they didn't have weapons. The first thing Fidel Castro did was, he said, "Come on, campesinos, turn in your weapons for plows." And they did. And that was the end of that. He never had armed opposition; he knew that he could roughshod over the people of Cuba from then on. And he has.

In Czechoslovakia when the Soviet tanks rolled in, they were facing an unarmed citizenry who could do nothing but hurl stones. The same was true in Hungary, the same was true in Poland. We never want a situation like that to exist here. Now, let's talk about what the people want. You can hardly find a more popular issue than this. The people believe they have a right to keep and bear arms without registration and licensure laws. And if we expect to take this constitution to the people and give them some positive, affirmative reasons to vote for this constitution, we are going to have to have in there provisions like this, that show that we respect their wishes and respect their rights.

In my own district I hardly know a person who favors licensure registration of firearms. People know that this gets down to basics. This is about as gut an issue as you can find, and they want to maintain their right to keep and bear arms without knowledge by the government, without restriction or control by the government.

Mr. Avant has a good amendment. It protects our rights. It protects our people in the future, and it's something the people of this state will stand behind and support fervently. So I urge its adoption.

Question

Mr. Stovall Mr. Jenkins, you tried to make the issue as to whether or not we believe in registration of firearms. This is not the issue in this second amendment presented by Mr. Avant, is it? Isn't the question whether or not the legislature might be permitted to respond to some situation at some time in the future, whether or not they might have the freedom and liberty to do so?

Mr. Jenkins The question is whether the legislature, in the future, could ever pass licensure, registration, or special taxation of arms. And the answer, I think, has to be no. The legislature shouldn't have that authority.

Further Discussion

Mr. O'Neill Ladies and gentlemen of the convention. It's amazing that we stand here this morning debating a right many people who are in favor of taking away, which our forefathers sought to give us long ago. The question then was not whether we should have the right to keep and bear arms, or whether they should be registered or anything of the sort. It was a right that they thought we automatically had. And I think that's the question we come to this morning.

I'd like to ask Reverend Stovall if he's in favor of giving the legislature so much flexibility if when it comes to gambling, he's going to be ready to give the legislature so much flexibility. I don't think he will be ready to give them flexibility. He's going to say, "No law shall allow gambling." And I think that's what we're coming to this morning on the right to keep and bear arms. And I think that right should be just stated as Mr. Avant's amendment has it stated.

I live in an area here in Baton Rouge where the incidence of rape is higher than in any other area of the state. Within this past summer, we've had nearly fifteen rapes in the LSU area. My wife has a gun, and it's registered, but I guarantee you the person who comes to rape her won't have a registered gun. No, he'll have a Saturday night special or some such gun, and that's what he's going to use as his weapon. And will it do my wife

any good that his gun is not registered? Will they be able to trace it any better? I don't think so. And what difference will it make that my wife has a registered gun? If she uses it, more power to her. If not, it doesn't really matter. Views the situation like Mr. Willis views the situation, dead is dead and guns are made to kill. The average man knows that a criminal will not have a registered gun in most likelihoods. The gun he has will be stolen. So what difference does registration make? The only person that it harms is the average individual, yourself, myself, who has a gun and wants to have it just for his protection and for his use.

I submit to you that we shouldn't be standing here discussing a right which most people think they automatically have. We are here discussing the right to keep and bear arms. Read that amendment carefully. It also says, "special taxation, no confiscatory taxes will ever be levied on firearms." And I think that's a very important clause in that provision. Those people here who would have you take that out think that registration will do some good. And I think in all sincerity they honestly believe that.

I submit to you that ten years ago the incidence of crime was far less than it is today. And I submit to you that back then, there wasn't any registration of guns and that today look at the crime rate. We do have registration of guns today and the incidence of crime is only just now beginning. I think in the future we are going to see it quadrupled compared to what it is today. And it will quadruple with registered weapons unless we pass this amendment.

Questions

Mr. Munson Mr. O'Neill, I wanted to ask Mr. Jenkins this question a few moments ago but he ran out of time. Perhaps you could answer it for me, because I want to reemphasize a couple of points that he brought out.

In case the legislature were to pass laws requiring the licensing of firearms, what type of citizen do you think is going to go down and have those firearms registered?

Mr. O'Neill Mr. Munson, the average law-abiding citizen who pays his taxes and lives just like the rest of us. Not the criminal, just the average man.

Mr. Munson In other words, you couldn't foresee a criminal going and having his gun registered.

Mr. O'Neill Not very likely, Mr. Munson.

Mr. Munson And in case then, to go a little further with that, that if laws are passed requiring registration of firearms, the only thing it could possibly do would be to take firearms out of the hands of law-abiding citizens. Isn't that correct?

Mr. O'Neill That is absolutely correct, Mr. Munson. A criminal who goes and registers his firearm would be an absolute fool, and I think you would agree with that.

Mr. De Blieux Mr. O'Neill, I think you are bringing out a very good point there. So, I would imagine from your argument is it correct that the criminals would be opposed to registration of firearms?

Mr. O'Neill No, Senator De Blieux, I don't think they'd care one way or the other; they are going to have them regardless.

Mr. De Blieux And I think you said that most of the crimes probably would be committed with stolen guns. Wouldn't those guns have to be registered to start with? Couldn't it solve two problems whenever they'd find the gun?

Mr. O'Neill Senator De Blieux, the guns used in major crimes, none of them are registered and

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Mr. O'Neill. But I don't want to protect the criminals by refusing to register their guns.

Mr. O'Neill. Well, you are protecting the criminal if you don't, or if you do, either way.

Further discussion.

Mr. Hayes. Mr. Chairman, ladies and gentlemen of the convention, I think what we are saying is the right to bear arms should not be abridged, but it appears that all the discussion is centered around some means of abridging that right to bear arms. Passing some kind of law trying to abridge the right to bear arms is doing nothing more than making criminals out of law-abiding citizens.

I think the federal statutes or the federal law has a system where you have to register every ammunition when you buy it. I can't buy a gun. Every time I buy a bullet, I have to register. I have to show my driver's license, and when I buy a gun I have to register the gun under the federal laws. So I can't see any reason for after passing some other rights here, giving the state the right to call in and make criminals out of all the people. ... I think that's all you're going to do. If I thought it would help curb crime, because I'm familiar with this Saturday night special I hear them talking about. They have people who use them on Saturday night, if you don't believe it, check with the undertakers. But I don't think it would help anything. Disarming everybody so the criminals could just have a heyday knowing that you have nothing to protect yourself with.

So I rise in support of the amendment.

Further discussion.

Mr. Weiss. Mr. Chairman, fellow delegates. I will not repeat many of the things that have been said but only try and clarify the issue.

First of which that the majority of the members of the Bill of Rights Committee have not been polled as to this amendment, and that there is no support one way or the other as far as I know, and I am definitely opposed to this amendment and hope you will vote it down.

The issue is very clear. The section clearly states that no one will be deprived of the right to bear arms, so I think we can eliminate that originally and without question.

The issue brought forth by the multiple sponsors of the floor amendment before you are registration and licensure. And some of the arguments, I think, have been ridiculous. For example, more people are shot by their family members is certainly true. But more people die in bed. There's no question that the irrational or vindictive person is going to use some weapon to kill another person, and if you rule out guns they'll use bricks and other weapons. So this is not the issue. The issue is whether we are going to help the people of the state and protect them, and I think that this amendment if adopted will do more harm to the honest law-abiding citizen than good. And I think many people have been misled by emotional arguments rather than reason. The honest people have no fear of registration or licensure. Do you question that your license on your automobile is some method of stealing your automobile from you by the legislators of this state? There's no reason to question this. But when your car is stolen, you like to know who stole it. These are the issues that are before the people of this state. Licensure is not a problem for the honest person. It's for the criminal. It's for the criminal who will get caught when he has some weapon that is not in his possession, that is not his own and in his possession.

There were instances of foreign countries brought up, for example, Greece. Well, certainly

people there are not in the position that we are in this country. Very few people have firearms. And so, it's very likely that some dictator moving into power could move into the one out of a hundred or one out of a thousand that bear arms in that country.

But let's take Switzerland where everyone has in his home a firearm - everyone is a member of the militia. Certainly these are registered firearms and everyone has a gun in their home in Switzerland. These scare tactics that are being presented to you, I think, are irrational, illegitimate and dangerous for the law-abiding citizen. Why should we allow anarchy to rule so that the criminal can be more effective?

Mr. Burson, I believe, has a question, Mr. Chairman.

Questions

Mr. Goldman. Dr. Weiss, isn't it true that if we are to have a legislature that is elected, that someday they might become like those revolutionaries in Greece or in Cuba, then our constitution wouldn't be worth anything anyhow, would it?

Mr. Weiss. We'd better shorten the election period if we are that frightened, to perhaps one week or one year.

Mr. Burson. Dr. Weiss, do you know that under Louisiana Criminal Law that there is a presumption that property recently stolen is found in someone's possession that that person is a thief, and that a professional criminal who is in possession of a handgun that has been just recently stolen would be presumed to be the thief, that this would be an aid to law enforcement officials in detaining that person?

Mr. Weiss. In other words, there is if a weapon is stolen... power within the police force of the state to obtain that weapon from someone who stole it. Is that what I understand you to say?

Mr. Burson. The law would be that if he is in possession of a weapon which has recently been stolen, that he is presumed to be the thief, and the burden is on him to disprove that presumption.

Mr. Weiss. I think you think you are talking about Switzerland is kind of moot since the incidence of crime there is absolutely zero, so it doesn't matter much, anyway?

Mr. Weiss. No, I think that we have a great problem in this country and throughout the world as to how to handle criminals, just as we have stupid, defectives and mental incompetents, and I don't think the answer is going to be one simple problem like Switzerland has, which is an entirely different country than the great expanse of these United States... and, incidentally, Louisiana is perhaps three times the size of Switzerland.

Further Discussion

Mr. Roy. Mr. "Bubba" Henry, Chairman, delegates to the convention, I rise in support of No. 1 of the amendment and opposed to Section 2 on Amendment No. 2, and I'll tell you why.

I've been around guns all my life. I was in the military. I was in a special forces unit. I fired all type weapons, and every time one of the... the same provision in the present constitution. We heard a lot of testimony and I then realized that mostly federal law controls in any event, and the reference to the militia was outdated and outmoded, pretty restrictive with respect to what the

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legislature may do in the future about guns. And for that reason, I support it, because I don't want any legislative law passed then that when folks are going hunting, that they have to open up the trunk of their car and show their shotguns or whatever have you.

But I feel like Jack Burson does to some extent and about like John Lennox and others with respect to New Orleans, that there are certain areas where we could have some type of limitation of controls. Now what Jack says is true to the extent that our present section, that is what the committee has recommended, is not too far different from the present constitutional provision, so that a court would say that by adopting our section that we automatically vitiate everything and all jurisprudence in the past that is court interpreted law.

If we adopt Jack's second amendment, in my judgment, what Mr. Burson has pointed out would be true that all jurisprudence, all former decisions with respect to carrying certain types of weapons, would be nullified.

For that reason, I think that in the future we ought to allow the legislature in special circumstances to deal with this problem. Now let me give you one final example, and then I'm going to move the question.

Now days, we have laws and the legislature may deal with alcoholic beverages with respect to minors, may deal with driving automobiles with respect to minors and what have you. And yet, it appears to me incongruous that we would say that any ten year old may own, it's alright to own it, but may possess and fire while hunting, a 30/06 which bullet goes at least five miles. It just appears to me that if the legislature felt that there were certain reasonable laws that should be passed with respect to minors employing weapons or using weapons for hunting or whatever have you, that as long as the law were reasonable, that it would be a valid law. But I'm afraid under Jack's amendment, it would not be. Now we just had in Alexandria a young boy who was accidentally killed, and certainly I'm not against kids hunting; I think it's a great thing; I hunted all my life. But I just feel that we should not constitutionalize something that is as broad and all encompassing as the second amendment. I think the allusions to the ballot box and all these other things are just not pertinent, and I move the adoption of section...of Amendment No. 1 and rejection of Amendment No. 2.

Question

Mr. O'Neill Mr. Roy, do you believe that the legislature will ever move in the future to decontrol guns or to take controls off of guns or do you think they will follow their usual course and put on more controls?

Mr. Roy Well, that's speculative. They may put on more controls, but there are no real controls at this time; so I wouldn't be opposed.... It would depend on what the control was. I move the previous question, Mr. Chairman.

[Previous Question ordered.]

Closing

Mr. Avant Mr. Chairman and fellow delegates, I wouldn't have come up here to close except for one statement that was made by my very good friend, Reverend Stovall, about vested or special interests. I want to tell you something. I started working on this amendment Thursday, and until this moment not a single human being has asked me to draft it or sponsor it. I believe in it. It's the way I think....It's what I think should be done and that's why I'm here.

[Division of the Question ordered. Record

17-64. Motion to reconsider tabled.]

Personal Privilege

Mr. Winchester Mr. Chairman and fellow delegates, as a retired assessor, I have been aggrieved. The rumor is going around that assessors have a concealed weapon in nickel, pencil, and a dollar eraser. This is absolutely not a fact. The pencil is way out in the open, but I do wish to stand here and pay honor and tribute to the assessing profession. I also more and particular do I pay tribute to the seven New Orleans assessors. The closing date to qualify for reelection was last Friday afternoon. Five assessors had no opposition and the other two had only taken opposition. This reminds me of an incident that happened in the parish of East Baton Rouge a number of years ago. A new assessor had been elected and appeared before our meeting and outlined the method by which he would equalize and assess property in the East Baton Rouge Parish. An assessor friend of mine sitting next to me who had been an assessor a number of years leaned over and said, "Winnie, that is a one term dreamer." He was correct. He was only in office for one term. The fact that I wish to bring to your attention is that no one loves an assessor but the people. I thank you.

[...sider tabled. Quorum call: 95 delegates...]

Reading of the Section

Mr. Poynter "Section 21. Writ of Habeas Corpus Section 21. The writ of habeas corpus shall not be suspended."

Explanation

Mr. Vick Mr. Chairman and fellow delegates, ever since the Magna Carta the right to personal liberty among English speaking peoples of this world has been guaranteed. Considered by the founding fathers of this country, not one of the highest, but the highest safeguard of liberty was the prompt and effective remedy for testing the legality of his or her imprisonment. The Constitution of the United States says that "the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it." The committee in its wisdom after testimony by constitutional experts before the committee... Mr. Chairman, as I was saying, the Federal Constitution says "the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it." This was in the Louisiana Constitution of 1921 and the committee, after testimony by experts, considered it to be unnecessary because the Federal Constitution preempts the State Constitution insofar as foreign invasion, rebellion, etc.; and further that emergencies and other times of disorders are precisely the time when the writ is most needed by the citizens. As a result the section now simply reads "the writ of habeas corpus shall not be suspended", and I yield for questions.

Amendment

Mr. Poynter Amendment No. 1 [...], on page 6, at the end of line 25, add the words "and preliminary examination". Amendment No. 2, on page 6, immediately after "pending" change the period to a comma and add the following: "and in all felony cases, except those indicted by a grand jury, the right to a preliminary examination shall not be denied."

Point of Order

Mr. Keen Question for the member. Is this amendment germane to the original subject?

Ruling of the Chair

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Mr. Kean. Yes, sir. The question, in the first opinion, is not germane, Mr. Kean.

Section passed: 67-0. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 22. Access to Court.

Section 22. All courts shall be open and every person shall have an adequate remedy by due process of law and justice administered without denial, partiality, or unreasonable delay for actual or threatened injury to him and his person, property, reputation, or other rights. Neither the state, its political subdivisions, nor any private person shall be immune from suit and liability."

Mr. Guarisio. Let me say first off that the last sentence dealing with "neither the state, its political subdivisions, nor any private person shall be immune from suit or liability" is, as you may recognize, the sovereign immunity issue again. Since we've taken care of that in a previous section, the committee has no objection to removing that sentence. The sentence that we took out earlier by the convention. So we'll deal with it differently, strictly with the first part of the article...the section. I don't think there's any particular controversy in this part of the section, and we made one basic change or two basic changes in there. The old constitution reads, "All courts shall be open, and every person for injury done him in his person, property, and goods, shall have a remedy, and have adequate remedy by due process without denial, partiality, or unreasonable delay." The only difference is that we added in the words "unreasonable delay for actual or threatened injury," and I think that will correct a hiatus in the law in that in the old constitution the injury according to the language had to be already done before a remedy possibly could be brought. We're adding redress. So taking into consideration that...an injunction, injunctive relief, whereas you might want to stop a person from doing injury to you that may be threatening to you, then you have a right to bring that action...that is threatened. You can do it under the present law, but we thought it was important to have a clause including it and constitutionalizing the threatened injury...and having the right to redress for threatened injury. I'll yield to any questions.

Questions

Miss Wisham Mr. Guarisco, would you elaborate a little more about "adequate remedy" for me, please? What does "adequate remedy" mean as related to this statement?

Mr. Guarisco Well, whatever the remedy may be necessary for the particular action. An adequate remedy for personal injury might be a money compensation. Adequate remedy for someone expropriating somebody's property would be possibly to stop those persons from taking your property. It would depend on the nature of the cause of action whatever it may be, and then the judicial function would then take over and make that determination.

Miss Wisham Good, thank you.

phrase, "All courts shall be open," does that specifically then rule out the possibility of closed hearings in juvenile matters?

Mr. Guarisco No. The present constitution has "all courts" now, and we are repeating that part of it, and that still doesn't preclude the legislature from having special acts for juvenile hearings. I don't think that would make any change.

in our law because the language isn't changed and the interpretation has been that juvenile proceedings are secret.

Mr. Casey: ... of today's ...

Mr. Guarisco Mr. Casey, I'll just read it to you to allay your fears: "Section 6. Open . . . In the old constitution, "All courts shall be open and every person"; it starts with that language. No change.

Mr. Hayes: Could you tell me what you mean by "unreasonable" in terms of months or years or something of this nature?

Mr. Guarisco Again, you are talking about judicial determination--what's unreasonable and what's reasonable. I don't think we can put definite time schedules down and when a case shall be heard and so forth.

Mr. Hayes I know you couldn't put down, but is there an absolute limit you say you could place on what is unreasonable? Would you say three years, two years?

Mr. Guarisco. I don't think we can do that in the constitution. No Mr. Hayes, no way. I might also add to Mr. Casey's question about the courts being open; this is not literally open insofar as opening the door to the physical courtroom. It's open to the litigants figuratively or access to the courts. It doesn't have anything to do with the walls, or the doors to the physical courtroom.

Mr. Duval Mr. Guarisco, the word "threatened" is a change in the law, is it not?

Mr. Guarisco It's a change in the constitution, but I don't think it's a change in the law. I think you still have redress for threatened injury via injunctive relief.

Mr. Duval. Let me ask you this. Is it the committee's intention to create new causes of action by inserting the word "threatened" in the constitution?

"San Francisco Absolutely not.

Mr. Duval Do you think it possible that through judicial interpretation new causes of action could be created by use of this word?

Mr. [redacted] I don't think you do. I think it should be left to judicial interpretation.

Mr. Perez I'm very much concerned about the end of the sentence on line 1 of page 7, "or other rights," and particularly when you talk about "threatened injury to other rights." Could you explain to me what that means? What rights are we talking about?

Mr. Guarisco Well, Mr. Perez, we didn't intend for this list to be exclusive...illustrative, and we felt that if there are any other rights that a person may properly bring before the court, then he would have a remedy or a right to bring it.

"... Perez would not find that there was any person under any circumstance who would be able to give a reason of action for the conduct, and that would be an alleged cause of action would be because when you say "or other rights," there is no limitation?

Mr. Guarisco: I think there is a limitation in the fact that the court could still properly entertain an exception of no right of action; that person may not have a right to bring the suit.

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action.

Amendment

Mr. Poynter Delegate Conroy sends up the following amendment:

Amendment No. 1, on page 7, line 1, after the word "rights" delete the remainder of the line and delete lines two and three, both inclusive in their entirety.

Explanation

Mr. Conroy The second sentence of this section again raises the question of sovereign immunity. You may recall that the convention spent the better part of two days back in July arguing about sovereign immunity. Ultimately, after many, many different kinds of amendments were presented, Section 14 of the legislative powers section was finally adopted dealing with this question, as this convention ultimately determined it should be dealt with by a vote of 80 to 26. I disagreed with the conclusion which this convention reached at that time, and voted against the final amendment which Mr. Kelly had proposed, that set out what would be included in the constitution, but I think it inappropriate to fight that battle again after we spent so much time on it, and I think that the section should be deleted and left to be handled under the Section 14 of the Legislative Powers Article as we have already done. I move the adoption of the amendment.

Further Discussion

Mr. DeBlieux Mr. Chairman and ladies and gentlemen of the convention, if what Mr. Conroy said is true that we've already passed this particular section and he doesn't want to raise it again, I don't see why he proposed this amendment. The Style and Drafting can decide whether or not they want this particular provision here or the one that's working in the judicial section where we adopted it. I would object to the amendment and just say, "Vote it down and let's go along to something else."

[Previous Question ordered.]

Closing

Mr. Conroy Just very briefly, the committee itself has concurred as presented in the oral presentation of this with the deletion of this sentence because it is consistent with the prior sentence, and as a member of the Committee on Style and Drafting I urge you not to dump things like that into this Committee on Style and Drafting. Let's settle them here on the floor, take it out, and let it be resolved as it was earlier. Thank you.

Questions

Mr. Avant Mr. Conroy, is it not a fact that this sentence that you are deleting goes beyond the question of immunity of state and political subdivisions and deals with the immunity of private persons?

Mr. Conroy Not in my judgment it doesn't because to the extent that it refers to private persons, there are occasions in which a private person is able to cloak himself with sovereign immunity, and I think the whole question was debated at great length as to the problems that exist on some degrees of personal immunity that do invoke the sovereign immunity concept. That's what led to the ultimate wording of the amendment that was ultimately adopted under the Legislative Powers Article, to my appreciation.

Mr. Avant There are personal immunities other than sovereign immunity, and if you delete this sentence, the legislature can extend immunity to classes of persons not on any doctrine of sovereign immunity. Is that not true, sir?

Mr. Conroy Well, I don't...not in any fashion that I would regard as dangerous. Certainly the legislature could, but you'd still have your equal protections clause, your due process clause, all the other clauses which protect individuals in their rights and the preservation of their rights, so I don't think that here it's pertinent. I would have assumed and do still assume that the insertion of it here coupled with "state and its political subdivisions" was intended to inject the issue in connection with the sovereign immunity issue.

Mr. Weiss Delegate Conroy, don't you think this is germane to the access to the courts in that it simply defines who may go to the courts, and therefore the committee put it in for that reason? Don't you think that's good enough reason?

Mr. Conroy I don't follow you.

Mr. Weiss In other words, who may go to the courts for what issue? If you have...

Mr. Conroy That's in the first sentence.

Mr. Weiss And that's right, and it further defines it in that it may because of political, or because of a political subdivision you may appear before the courts, and they are not immune.

Mr. Conroy But we already covered the extent to which they are or are not immune, Dr. Weiss, under the Legislative Powers Article. As I said before, after quite lengthy debate we dealt with that question there and determined exactly to what extent they should be liable.

Mr. Lanier Mr. Conroy, doesn't this sentence here go substantially further than the convention did under the Legislative Section? In fact didn't, in the Legislative Section, didn't we say that the state was not immune for contract in tort, but for all other matters the immunity had to be waived by the legislature?

Mr. Conroy That's correct. The two provisions are inconsistent as they presently are worded. In other words if we wanted to leave this sentence in, at least it would have to be subject to consideration of amendments which would bring it in line with what was done before, or we'd have to debate as to whether we wanted to stick with what we had done before and so forth. As I pointed out in my argument, I didn't agree with the conclusion that was reached then, and I still don't agree with it, but I think that the convention has spoken and we ought to delete this sentence and go by what we did before.

Mr. Lanier And if there are substantive inconsistencies, Style and Drafting cannot rectify substantive inconsistencies.

Mr. Conroy They could not rectify them. All they could do is point out back to the convention that there were inconsistencies for the convention to resolve because Style and Drafting could not and should not attempt to resolve substantial differences between sections.

[Amendment adopted: 78-17.

Mr. Conroy has announced that he will...]

Amendment

Mr. Poynter The amendment is sent up by Delegate Arnette.

Amendment No. 1, page 6, line 30, after the word "for" and before the word "injury" delete the words "actual or threatened".

Explanation

Mr. Arnette This is a very simple amendment, and the main thing it does is bring the constitution that we're proposing in present line with the

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present constitution. I don't know whether the committee intended to create any new causes of action, but I'm afraid that this language might. I don't know that it will, necessarily. It has been universally held throughout the jurisprudence of the United States, that when you say "injury," if it's a threatened immediate injury to someone's rights, it may chill their rights or something like this, you do have redress in the court. This is the definition of "injury" so I don't think we need to put this "threatened injury" in there and possibly create several more causes of action. If it was intended not to create other causes of action as Mr. Guarisco has stated, then definitely I think we ought to leave it out. It is excess verbiage if it does not create anything new. I'll yield to any questions.

Questions

Mr. Roy Mr. Arnette, if a person were going to be liable and had been being liable for the past several weeks, don't you realize that by putting "threatened injury" in here that one could seek redress before the final libel occurred or the final slander that involved maybe his family, and that's the reason we put it in here, and it would be left up to the court to determine whether it was serious enough to allow him in court at that time?

Mr. Arnette Mr. Roy, I'd just like to point out to you under the present law which just states "for injury" he may do that right now.

Mr. Roy That's not so because in the present law sometimes you get met with a prematurity exception, don't you?

Mr. Arnette That's a possibility, yes. I don't want to bring a suit if it is premature. That's the whole point of me taking out "threatened injury."

Mr. Roy No, but you understand the court tells you when you go to file the lawsuit because you know that somebody's going to libel and slander you, and he's got it in the newspaper office to do it, and you want to have a trial in the court, I can say, "your suit is premature because you have not yet been injured, and the threatened injury is not enough."

Mr. Arnette It depends on what type of threatened injury it is, Mr. Roy. You know that as well as I do. If the threatened injury is immediate, if it chills your rights, if it hurts your person, if it hurts your property rights, then definitely it is an injury that a person can get redress for in the courts. The only thing that worries me is the point that you just brought up—that this would open up excess, new litigation, and that's the thing I object to. I think a person's rights as they presently are are quite adequate to protect him.

Mr. Roy Don't you think that the Declaratory Judgment Act is in essence something of this nature also?

Mr. Arnette The Declaratory Judgment Act is under the present law which states "for injury," so I don't think we need to change the constitution and take the chance on opening it up to excess litigation. When a person would not have standing now, I don't think he ought to have standing in the future. I think if we put "threatened" in there then we're going to cause problems; we're going to cause excess litigation, and I don't think we want to have additional causes of action for people. I think what we want to do is let the people have the rights and causes of action that they have at present, and this is what my amendment does. It just brings it in line with the present constitution.

Mr. Roy Well, if "threatened" doesn't mean anything, or it means exactly what you said with respect to

Mr. Arnette Because if you put "threatened" in there, it doesn't necessarily mean immediate threatened injury that would chill a person's rights, or cause damage to his property rights or things of this nature, and I think if we put "threatened" in here, we're making a great mistake, Mr. Roy, because "threatened" opens it up for many, many additional new causes of action that a person would not have standing to sue for in court at the present time.

Mr. Willis Mr. Arnette, I own the view, and I trust you do too, that simplicity is the closest thing to perfection.

Mr. Guarisco I think simplicity and clarity is the closest thing to perfection.

Mr. Willis Now, we have rid ourselves of the last sentence, and I ask you to look at the first sentence, and read it with me, and I'll put a question mark to that later. "All courts shall be open and every person shall have adequate remedy by due process of law and justice." Now, I ask you, if a period were to be put there, would that be adequate remedy by due process of law and justice without it being administered and so forth. Don't you think that that is words, words, words?

Mr. Arnette Well, that's a possibility, Mr. Willis. I just saw one particular snake in here, and I'd definitely like to kill it right now. If there are other things in here that you don't agree with, I might be inclined to go along with you.

Vice Chairman Casey in the Chair

Mr. Goldman Mr. Arnette, I've been listening to this legal discussion about stopping somebody from publishing something or something like that because it might be injurious to them. It seems to me like that would be prior restraint. You mean if I was going to run an editorial against some action or against some person whom we thought was doing something wrong, we always send these editorials out to them ahead of time and give them a chance to reply. Could they go to court and stop me from running that editorial? That's definitely prior restraint.

Mr. Guarisco I believe you're right, Mr. Casey.

tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Avant], on page 7, line 3 (of course, now it really followed the word "rights" on line 1) at the end of the line add the following: "no person shall be immune from suit and liability except as otherwise provided by law."

Explanation

Mr. Avant I don't care to explain that amendment; that is not the amendment I asked be prepared. The amendment was, "No private persons shall be immune from suit and liability except as otherwise provided in this constitution."

Mr. Avant I believe you're right, Mr. Casey.

Mr. Poynter I believe you're right, Mr. Avant.

Mr. Avant "No private persons shall be immune from suit and liability except as otherwise provided in this constitution." The language in that amendment is not a problem. It is the problem that

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legislature from passing laws which will give immunity to private individuals of various and sundry classes to be selected by the legislature of immunity for their acts. For example, just recently I had an experience along with several thousand other people in my area where a utility company, in spraying its power lines with a hybridize, damaged to a great extent the property of everybody over about a fifteen mile stretch. Now the legislature could very well decide, in its wisdom, that that's the kind of conduct that they should be protecting. You couldn't do anything about that if that happened to you. I can think of other examples where statutes have been passed in other states extending immunity to various categories of persons from being liable for damages as a result of their conduct in certain particular areas. I do not think that is sound. I think that all citizens should stand on an equal footing, insofar as the responsibility for the consequences of their acts are concerned. This will simply nip that in the bud in advance.

Questions

Mr. Tobias Mr. Avant, what is a private person? Do you not mean individual?

Mr. Avant A private person is an individual, a corporation other than a public corporation.

Mr. Perez Is there any companion measure in the present constitution similar to the one that you've offered, Mr. Avant?

Mr. Avant I don't believe, Mr. Perez.

Mr. Perez One thing that bothers me very much is you say, "No private person shall be immune from suit." What about a child, a minor? What about a husband and wife relationship? All these various provisions we have in the Civil Code and otherwise.... All of these various situations we have where it prohibits suit in those situations - I'm very much concerned about that.

Mr. Avant Mr. Perez, as you probably know, a minor now is not immune from being sued. He just has to be sued through his tutor, who is the person who represents him in court. But if a minor injures you and he has property, you can sue that minor through his tutor. You can recoup your judgment out of that minor's property. The same is true with respect to the other categories you mentioned.

Mr. Perez Can a minor sue at the present time or only through his guardian?

Mr. Avant A minor is sued and he does sue through his legal representative.

Mr. Perez (Can a minor sue his father or his parents?)

Mr. Avant Under certain circumstances, yes, and under certain circumstances, no.

Mr. Perez But, this would be an absolute right with regard to the suit by the father against a child, child against a father, husband against a wife and so forth which we have many limitations on now in our Civil Code. Isn't that correct?

Mr. Avant This has to do with an immunity, an absolute immunity, Mr. Perez.

Mr. Velazquez Mr. Avant, wouldn't this preclude situations where in some states if a doctor comes upon the scene of an accident, he is required to administer, to give assistance, and in some states when he renders emergency assistance, he is given immunity from any problems that might result from that emergency assistance?

Mr. Avant That's a so-called good Samaritan Doctrine, Mr. Velazquez. I don't happen to be in favor of that. I think if he stops, he ought to give you the same type of treatment he's supposed

to give you if you were paying him.

Mr. Velazquez Well, doesn't the good Samaritan Doctrine extend to... if you see an automobile overturned and as a good neighbor, you stop and try to give the people some assistance and in the process of giving them assistance, you do more damage than good, in some states you would be immune from damage or against that too?

Mr. Avant Mr. Velazquez, that has nothing to do with immunity. You're only required to exercise due and reasonable care and do what an ordinary reasonably prudent person would do under the circumstances. If you were just a private citizen and you stopped to render aid to someone, that's all that would be required of you is to do what a reasonable and prudent person would do under the circumstances. If you were a layman, I don't expect that your failure to perform brain surgery on him would be held to be a lack of due and reasonable care under the circumstances. You just do the best you could. I see no fear, reason to fear in that area.

Mr. Lanier Mr. Avant, I've got an amendment here and it says, "No person shall be immune from suit and liability, except as otherwise provided by law." Is this the one that was changed, are we taking it like this?

Mr. Avant Well, now they said that was my amendment. That was not my amendment, Mr. Lanier. I had an amendment, but they told me that that was my amendment.

Mr. Lanier Well, but what I'm getting at is that all we....

Mr. Avant If I had wound up changing your amendment because I was erroneously informed that that was my amendment, I apologize.

Mr. Lanier No, no, I don't have an amendment. What I'm getting at is, what is under discussion is that no private person in the constitution or no person as provided by law. Which one are we going with?

Mr. Avant "Except as provided in this constitution."

Mr. Lanier "Except as provided in this constitution." OK. Then that brings up the questions that I have. What about the interspousal immunity established by statute? If we were to wish to keep that, would we then have to put that in the constitution?

Mr. Avant I don't think that the adoption of interspousal immunity is necessarily going to be sound or valid after the action of this convention the other day, Mr. Lanier.

Mr. Lanier What about the immunity given to the coroner on commitments? Would this amendment have the effect of doing away with that, unless that was placed in the constitution?

Mr. Avant If the coroner wrongfully put you away when any reasonable man, any reasonable coroner wouldn't put you away, for reasons other than medical, for reasons other than his best judgment, why should he be immune?

Mr. Lanier Let me ask you this. Have you had a staff research to see how many immunities are presently statutory in our law?

Mr. Avant I haven't had a research made to see how many there are, but I can tell you there are many.

Mr. Lanier So, in order for us to rationally determine which ones we wish to preserve, we would have to review each one and then vote to see whether it

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should go in the constitution or not, if your amendment is adopted. Is that correct?

Mr. Duval: Yes.

Mr. Lanier: Would not the effect of your amendment, in the absence of putting them in the constitution, be to repeal all of these immunities?

Mr. Avant: I don't know. I don't know what the effect would be.

Mr. Kean: Mr. Avant, following up Mr. Lanier's question, as I appreciate it at the present time, there is a provision in the statutes dealing with civil defense personnel and it grants to them immunity. As I understand your amendment, that would do away with that statutory....

Mr. Avant: That is not an absolute immunity under the statutes, I don't believe, Mr. Kean. If a civil defense personnel comes to your place and just arbitrarily does something to you, he's not immune from that. It only says it's a limited immunity under circumstances where they wouldn't be liable anyhow.

Mr. Kean: When it is limited in that way, your amendment would do away with it.

Mr. Avant: That's right.

Mr. Kean: And taking your example dealing with the utility company that sprayed the fence lines or whatever they did as I read this amendment, the legislature could grant the utility company immunity from suit under those circumstances.

Mr. Avant: Now, sometimes it's for private persons.

Mr. Kean: Oh, I see. In other words you are including in the term "private persons," corporations and so forth?

Mr. Avant: The word "person" includes corporations, partnerships, and persons as you know, but they are not citizens.

Mr. Kean: So that under your amendment there is no private individual, corporation or any other type of organization could be granted immunity unless it was put in the constitution?

Mr. Avant: That would not be enjoyed by everyone.

Further Discussion

Mr. Duval: Mr. Acting Chairman, fellow delegates, I rise in adamant opposition to Mr. Avant's amendment, although I understand his intent. This particular amendment could have more sweeping changes in our present law that we don't know about than anything that's been introduced to this convention. I ask you to very seriously think about it. There are many immunities of various types or another set up in our law for very good reasons. There are really too many to list. But under this, all of them could possibly be obliterated. Although it may not be Mr. Avant's intent, that's what the language says: "No private person shall be immune from suit and liability." All your charitable institutions, your eleemosynary institutions, have an immunity in the law, your churches and some of your hospitals, but your churches. Certainly. All of them are going to be subject to liability now under this amendment. In Louisiana, husband and wife, there's an interspousal immunity. All of this is going to be changed. What about the immunity of legislators on the floor of the legislature? They are still a private person. Under Mr. Avant's definition they have not all of a sudden become public people. The legislative immunity is done away with. Judicial immunity when a judgment is a decision, done away with. Many, many different instances -- this amendment is far too pervasive. It's not needed. If there are certain inequities

in the law, the legislature can specifically remedy them without a broad sweeping amendment that we have no idea of the ramifications -- which we haven't studied -- which would be very, very ill-advised to adopt without going into this matter very deeply. I cannot urge you enough to vote against this amendment, because we really don't know what it does. What about a minor under four years old? Is this person going to be now guilty.... now he can be guilty of negligence? I don't know how many changes. What about the Workmen's Compensation Act where the employer is actually in essence immune from suit in tort? He's only liable for the.... it's a no-fault type action. He's only liable under that specific statute granting him a limited immunity in tort. I realize that is not Mr. Avant's intention. But under this broad sweeping language that telling what could be found in it to come under this language. I urge you very much to vote against this amendment. As I feel we do not have enough information to seriously understand it, that many, many exemptions and immunities and privileges under law would be repealed to the detriment of Louisiana.

Further Discussion

Mr. Conroy: I want to very briefly underline what Mr. Duval has said. I rise in opposition to the amendment. It's difficult I think for any attorney to stop so quickly and try to list all of the possible areas in which immunities presently exist that should be preserved for private persons. Mr. Duval has rattled off some. The questions from the floor indicated others. The basic concept of immunities that exists in the present law are frequently that some people should be protected within the wisdom of the legislature and others, for the good of the intentions of the state, should be clothed with immunities. Under this category fall the charitable immunities. There are other immunities where people such as stockholder's immunity, there is the interspousal immunity that was referred to. In other areas, there are occasions when people are, in effect, asked to do dangerous things and clothed with immunity in connection with it otherwise, the things might not get done. I think in this area falls the good Samaritan law, where a doctor is asked to perform under circumstances where he could not otherwise properly perform and not assume the risk where he is doing a worthwhile public service. I think it is similar to the situation also that exists with the civil defense immunity. I think on occasions we've found very dangerous circumstances which have existed in the river, where chemicals have to be removed from the bottom of the river, or things such as that where nobody could operate or perform the things unless they could feel satisfied that they were clothed with a proper type of immunity to protect them -- where they are required for the good of the whole to undertake extremely dangerous activities which they could not undertake without some degree of immunity. I urge you to reject this amendment.

Further Discussion

Mr. Avant: Mr. Chairman, this amendment is a highly technical amendment insofar as the law is concerned. I can see that some of my brothers at the bar don't understand my intention behind the amendment. So if I am in order, I would ask permission to withdraw the amendment until such time as I can explain it to the house.

Announcements

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Thursday, September 13, 1973

ROLL CALL

[No delegates present and a quorum.]

PRAYER

Mr. Stovall Let us pray. Eternal God, we worship You as the One Who loves us even when we are unlovable, Who accepts us even when we are unacceptable, Who is faithful to us even when we are unfaithful to You and Who is dependable even when we are undependable. We pray that as we worship You as such, that this realization of Your grace and goodness and acceptance and love toward us might lead us to establish this kind of relationship, one with the other, and with all mankind. Be present to us as we deliberate together. We pray that You will be with our families and guide the people of this state in their thinking, that all of us together might affirm that which is best for the future of our state. For we offer our prayer in Your name as the One Who was, and is, and ever shall be. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES

[1 Journal 4e]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 25 introduced by Delegate Alphonse Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections. A substitute proposal for Committee Proposal No. 2 by the same gentleman on behalf of the committee: A proposal to provide a Preamble and a Declaration of Rights to the Constitution. The status of the proposal is that the convention has adopted as amended the Preamble, Sections 1 through 6, has voted to delete Sections 7 and 8, and has subsequently adopted Sections 9 through 22 as amended; presently we have under consideration "Section 23. Prohibited Laws."

Reading of the Section

Mr. Poynter "Section 23. Prohibited Laws
Section 23. No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted."

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, this basically is in the present constitution. It is in the United States Constitution and it simply provides that "no bill of attainder shall be enacted." A bill of attainder is a form of legislative punishment. Back in the old, old days parliaments used to be able to make some type of punishment which was outside the scope of judicial review or judicial punishment. So, that's where it stems from. An ex post facto law is a very common latin term which means that you may not pass a law that makes something a crime or something punishable that you had already done that was not a crime at the time you did the act. Of course, a law impairing the rights of contracts or the abridging of contracts would simply be that if you and I enter into a valid contract today, the legislature couldn't pass the law abrogating those contracts that are valid. I urge the adoption of this section as it is.

[Poynter: would not support it on the grounds, someone already said. This. Motion to reconsider failed.]

Reading of the Section

Mr. Poynter "Section 24. Freedom of Commerce

Section 24. No law shall impair the right of each person to engage in commerce by controlling the production, distribution or price of goods except when necessary to protect public health and safety."

Explanation

Mr. Jenkins Mr. Chairman, delegates, for a lot of people this is a long awaited section. Since the Bill of Rights Committee adopted it, I think it has provided employment for a number of lobbyists who have been able to actively succeed in defeating it, really, through their work. Some of them are my good friends and I hope that they will thank me later for proposing it in the committee -- because it has been good to them for the last few months. There is an amendment which has a sufficient number of coauthors on it to delete this section. So I am not going to be very lengthy in a discussion of it and I am not going to answer any questions, as it will be over with shortly anyway; it's going to die a quick death. The point of this section is to try to some extent to get government out of economics, because it has been shown time and time again that good politics usually makes bad economics. We have seen on the national level an utter failure of wage and price controls to accomplish any of the ends which were attempted. These government interventions which occur from time to time -- We have seen it in this state with regards to milk and liquor and many other products -- usually don't help anybody, certainly not the consumer. When we talk about price-fixing, there's generally two types of price-fixing, maximum price-fixing and minimum price-fixing. Maximum prices were set in the national wage and price controls and the result, of course, was shortages, particularly when the maximum price set was below the market price. People simply will not produce if it's not profitable to produce. Minimum prices of course we see in the milk industry in this state. Their purpose is to prevent free competition because they say that a man cannot sell at the lowest price he chooses and consumers in our state, in the case of the milk industry, for example, everyday are being cheated, not by retailers, not by processors, not by farmers, but by laws, by government -- a government which prevents them from buying in a free market. Our laws make a criminal out of a man who chooses to sell at a lower price. He'll be put in jail for it. That doesn't make sense, particularly in this day and time when prices are constantly increasing. Every time the housewife goes to the supermarket she is faced with higher prices and yet we have a law on the books, the so-called Milk Marketing Law, which makes it possible for people to be put in jail if they will charge her a lower price than the state minimum. It stifles free competition, does not protect anyone. You find as you look from state to state that farmers, processors, make just about as much in states where you don't have controls as they make in states where they do, but the consumer in almost every case pays much less for milk and other similar dairy products. The purpose of interventionist legislation, interventionism in the economy, is generally to help one group at the expense of the other. We are going to help consumers now and hurt producers, or we are going to help producers in this instance and hurt consumers. I think sooner or later the politician will learn to leave the market alone, let supply and demand and market forces handle the situation. Let people be punished for fraud, misrepresentation and things of that sort, but don't make criminals out of men who simply choose to compete in a free market. Of course, many cattlemen are placed in a strange position these days; on the one hand, protesting about ceilings on beef prices, talking about how evil those controls are and, on the other hand, talking about how we need to preserve milk price-fixing and how good those are. I fear that producers who take advantage of such laws now will someday find themselves on the receiving end of bad legislation because other political groups will find that they can play the game as well, and what

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is now an advantageous control may tend to be disadvantageous in the future. Someone has asked, "Why do we need such a provision in this constitution?" It would do no good at all to have it in the statutes; if we passed a law saying there should be no price-fixing and put a statute, then if a bill were ... came up in the legislature to establish, say, milk price-fixing and it were passed, well, that latest legislative assertion would supersede the first. So, it would do no good at all to have a prohibition against price-fixing. Some people, of course, say that if you don't have minimum price-fixing in milk and some other commodities, you are going to have the creation of monopolies. But, of course, what's seldom realized is that you always have substitution in instances like that. If one group were to get control of a particular commodity, people can always substitute other somewhat similar commodities for it and as they do, the producers in that field, the so-called monopoly field, find that they can't sell their products and they have to lower their prices. Competition comes in and takes care of the situation. We don't have price-fixing in bread or vegetables, both perishable goods, but you notice we don't have monopolies in those fields. In fact we've had more competition in the milk industry in this state under price-fixing than most states have had where they have a free market. Another question raised by interventionist legislation which intervenes in the free market is the question of rights. The fact is people have a right to make a living, to sell their goods at a mutually agreeable by then with others -- that's freedom of contract --- and laws which go against that right, or infringement, ought to be discouraged. The fact that this section was proposed is part of a trend really. In the 1970 proposed Arkansas Constitution, for the first time probably in American history, a section of that constitution would have outlawed price-fixing. Unfortunately, the Arkansas Constitution lost at the polls; I hardly think that was one of the reasons, but it lost. I think in future years and other state constitutions and in this state we will see increasing efforts to eliminate controls on prices, production and distribution of goods and services, because the public simply is not going to put up with the dislocations in the free economy that result from such arbitrary intervention. So I urge you to support this section and to defeat the amendment that will come, to try to eliminate it.

Amendment

Mr. Poynter. Amendments proposed by Delegate Flory and many, many coauthors.

Amendment No. 1. On page 7, delete lines 7 through 31, both inclusive, in their entirety.

--- Mr. Flory ---

Mr. Flory. Mr. Chairman, and delegates, it is a very simple amendment; it just deletes Section 24 from the proposed article. There are seventy-two coauthors on the amendment. There has been a great deal of discussion about the impact of this particular section and I don't want to get into quarrel with my good friend, Mr. Jenkins, as to what he did or did not intend to do, but I do suggest to you that perhaps the language that is drawn and presented here does not necessarily accomplish the purpose for which he intended it. First, let me say that I believe it's matters that ought to be relegated to the legislature for their consideration in that what he attempted to cure are statutory provisions of law in this state. I only give to you several things that I believe that the section would do. It would interfere with perhaps the operation of the Public Service Commission. It would interfere with the operation of the inspection of meat, eggs, milk, pesticides, restaurants, would, I believe, strongly interfere with the consumer credit code that has been enacted by the legislature last year. Further, it would complicate the regulation, the exploration, production and the sale of natural resources, oil, sand, gravel,

shells, what have you. I just believe that these are matters that ought to be taken care of by the legislature and I would ask for the adoption of the amendment.

Further Discussion

Mr. McDaniel. Mr. Chairman, fellow delegates, I rise to support this amendment. As a representative from a predominately agricultural area with rather small towns in this state, we are opposed to this for several reasons. For one, a very good one, nobody knows really what the impact of an amendment or a section like this would be. We don't know what's involved. When you talk about distribution of goods, what is involved? How broad is that? What is the definition? When you begin to talk about agriculture and most of the attacks or the reasons for supporting a freedom of commerce, it's been usually directed at something like the milk industry. But let's look at agriculture, something that I know a little bit about: your grade standards for eggs, for grain, for many, many other things. There's price differentials here that are built into the marketplace that farmers use, but then that's as far as consumers go, these grade standards are protection for the consumer. When he buys a grade A egg for example or he buys a grade of milk, he knows that these certain quality factors are involved. These are his protection. What would this do to these type things? The things that strikes me about a lot of the items here in the Bill of Rights deal around what I call the symbol I see of justice. We hear or we have the idea of the scales here, with the rights of the individual on one side carefully balanced against the rights of society which is a collection of individuals on the other. I think throughout the Bill of Rights here this is the balance that we are trying to maintain. What am I really trying to say is, with a section such as this I think we have implications that are far-reaching. One of the mayors of a little town that I represent of less than five thousand people called me, said what would this do to our ordinances on local options for licensing and controlling door-to-door salesmen and people like this. In small towns like this they don't call the police department; they don't call members of it; they call the mayor and quite often, in fact, while I was there, there was a reply that this fellow down here on the front door is worrying me to death trying to sell this product. I think we are talking about a lot of things here when you begin to talk of freedom and a section like this that no one really knows what's involved. I am not trying to get into things like the milk issue that has been mentioned from time to time because but I am sure there are good reasons for it. These matters can be taken care of in the legislature where you have the flexibility to meet quality standards, to deal with consumers' interest and to protect the farmers, for example. No one knows what can be done here with the constitution, but let's leave it to the legislature where it ought to be. Thank you very much.

Further Discussion

Mr. Stovall. Mr. Chairman, members of the convention, one brief statement. I think all of these people have signed this not because we have been lobbied by different special interest groups, but rather because of the basic inconsistency and irrelevance of the section itself because of its lack of merit, and I think we do have adequate answers to the previous question.

Unenumerated Rights Section 25. The enumeration in this constitution of certain rights shall not

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be construed to deny or to disparage other rights retained by the individual citizens of the state."

Explanation

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, this just simply makes sure that any rights that we don't give to the state still are retained by the individual and it's it basically comes from the United States Constitution, Amendment No. 9, which says "the enumeration in a constitution of certain rights shall not be construed to deny or disparage others retained by the people." I know there's an amendment, but it ... I don't see what good the amendment does; this is very plain; it's very simple, and I move the adoption of it.

Question

Mr. Denberry Chris, ...

Mr. Roy It changes people to individual citizens; I wanted to say that, Mr. Denberry; that's the only thing it does.

Mr. Denberry Well, I wanted to ask you, is there any reason for restricting it to citizens? ... of this state I mean? Doesn't the Bill of Rights apply also to individuals who happen to be here who are not citizens of the state?

Mr. Roy Well, Moise, when we covered that --- I don't know that it means only the --- a Louisiana citizen. A citizen just means a person --- a citizen of the United States is what we interpreted it to be.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jack]. On page 7, delete lines 12 through 15, both inclusive in their entirety and insert in lieu thereof the following:

"Section 25. Rights of People Preserved
Section 25. This enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed."

Explanation

Mr. Jack Mr. Chairman, and members, if you were listening carefully when Mr. Chris Roy mentioned about the U.S. Constitution, the U.S. Constitution does not use the words "individual citizens." It uses the words "the people." Now my amendment is the exact words of the present constitution and is in keeping with the Preamble of this new constitution which heads this Bill of Rights. Now, if you will look at the Bill of Rights at the beginning of this --- rather the Preamble at the beginning of the Bill of Rights that we are considering, you will see it uses "We, the people of Louisiana," and the present closing part of the Bill of Rights in the present constitution, it reads, "this enumeration of rights" -- and that followed that in my amendment -- "this enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed." Now, the U.S. Constitution uses the same words. It doesn't use the words "individual citizens"; it uses "the people." The people are the ones who give power; they are the ones who reserve power. I don't understand this change that Mr. Woody Jenkins is apparently the main author of. I have talked to him at lunch about it. I still can't see why we can't follow like the United States Constitution and the present Louisiana Constitution and say that things are reserved to the people. Now, if you can stop and do a little thinking, this may be the wording to limit the legislature. It may be also a method where there could be discrimination if you adopted the words "the individual citizen" instead of "the people," and you know the United States Constitution, the decision of the Supreme Court provides for no discrimination, and I can't for the life of me see why we should use mumbo jumbo

or some unusual wording if we really mean that this would apply to the people of Louisiana. There's some preference, some attempt being made to give some individuals preference over other individuals or else why can't we say, as I repeat, like in the United States Constitution, use the words "the people," open this new constitution like we do with the Preamble, "We, the people of Louisiana," and close it with the wording as I have stated to you "the people of Louisiana" rather than try to say "the individual citizens of this state." Further more, if you have it limited to "the individual citizens of this state," that's going to be a discrimination for people that work here, but are still citizens of other states. It would make it possible to discriminate against people that are serving time, that have lost their citizenship till such time it gets it back, whether it's by this Bill of Rights or action of the Pardon Board or what not. I am saying when you start choosing new words, you are on dangerous ground and I have not heard any reason for making this change that's logical. It's against the U.S. Constitution; it's against the present provision in the Louisiana Constitution; it's against the Preamble in this constitution that we passed earlier in handling this proposal. So I say to be on safe ground, the safe thing is to adopt this amendment I have offered. Thank you.

Questions

Mr. Derbes Mr. Jack, I don't fully understand this area and I thought perhaps you could help me. First of all, as I recall, the United States Constitution is essentially a limiting document, rather than a granting document. In other words, doesn't the United States Constitution reserve to the several states powers not expressly provided for in the Constitution of the United States?

Mr. Jack My understanding is just the same as yours. I think if there wasn't a Section 25 in this proposal here, all rights would be reserved to the people anyway.

Mr. Derbes Right.

Mr. Jack Well, let me finish. When you ask me a question, I want to have time to answer it. When you say, not preserved "to the people," but you say like this is, "to the individual citizens," I am beginning to wonder if there isn't some idea of being able to discriminate. We have got some citizens --- I am not picking on anybody --- that believe you should not pay taxes unless you want to. Now, I don't know what you --- but when you treat everybody the same, then you are not discriminating. When you treat one person one way and another another and that, you are discriminating. I am in the dark as to what somebody wants to do, but I am afraid of this Section 25.

Mr. Derbes Now, one further question, Mr. Jack?

Mr. Jack All right, one because it may --- if somebody else wants to, I don't want to look like I have run out of time.

Mr. Derbes No. The way that the section is originally worded and the way that the section is worded in your amendment, doesn't that --- don't both the section as originally worded and your section as amended have the effect of raising to a constitutional status rights not specifically mentioned in the constitution? In other words, ordinarily rights granted by the constitution would take precedence over rights provided by inferior types of legislation, but this type of provision seems to say that the specific enumeration of rights in the constitution, though they may conflict with other rights, would not necessarily impair other rights. Don't you --- do you understand that question?

Mr. Jack You know I'll tell you frankly, you and I have very seldom agreed on anything and we're probably wasting our time, but I do not understand what

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me. I would like for the machines to be opened. I am going to send a copy of this to little Lawrence "Lou" Wilson in Haiti, and let him know know that I at least tried, and he will see who wanted to go along with him and who didn't. I'm going to ask if it's alright with the Chairman at this point that the machines would be open?

Mr. Henry We'll open them in just a minute. There's a man who wants to ask you a question. Will you yield to a question from Mr. Fontenot? Lady yields.

Questions

Mr. Fontenot Mrs. Warren, don't you think this should be left up to the legislature instead of putting this in our constitution? Do you think that it's absolutely necessary that it be in our constitution ... proposed constitution?

Mrs. Warren Yes, Mr. Fontenot, I really do, in that if you will read it I'm leaving up to the legislature to decide how they are going about this; but if I didn't think this was important I wouldn't have brought it to you. I don't think you have seen me up here very much, and I think this is about the second amendment that I have been up here with; so I think it is very important that we put it in the constitution.

Mr. Fontenot Mrs. Warren, are you aware that many times crimes are committed where there are many victims of these crimes perhaps murdered or maimed or disabled for the rest of their lives, and these criminals who are brought to justice might get out on technicalities? Do you want to provide in your amendment that these victims of these crimes where the criminals get out on technicalities are also compensated?

Mrs. Warren Mr. Fontenot, I think I tried to make that very clear that I don't want anybody out on technicalities. I'm going to go a little bit further with you. Now the law book that I know most about says back in there "Spare the rod and you spoil the child." I believe anybody that does wrong has the right to be punished. I don't believe in saying or letting a little child do whatever he wants to do when he is growing up and laugh at him because he is little, because one day he is going to get big. Now, I'm not trying to let anybody off on a technicality, and I think I made this clear.

Mr. Fontenot I think you missed the point. The point is, don't you agree that there are many unsolved crimes and many crimes in which criminals get off where they are victims, and these victims' families are not compensated at the present time?

Mrs. Warren Mr. Fontenot, what I really tried to do is correct an inadequacy that has gone on. Now, I don't think we have this kind of thing every day that I'm talking about, but if it's an injustice I think that it should be corrected, and I think it should be in the constitution.

Mr. Fontenot No, but you still haven't answered my question. My question is what about the victims of crimes that are unsolved? Don't you think their families ought to be compensated also?

Mrs. Warren If they're unsolved?

Mr. Fontenot Unsolved crimes or crimes that there's never been any arrest on yet. There's a dead boy in the street, he's been shot—don't you think his parents ought to be compensated when a crime has been committed. You want to compensate a guy who maybe went to Angola for a couple of years and is subsequently proved innocent. Don't you want to compensate also, individual victims who are dead

... the parents of those victims?

Mrs. Warren Well, Mr. Fontenot, I don't have any objection to that happening. If you would like to write a proposal or an amendment as to that, I'll go along with you, but what I'm interested in right now is what I have stated - that these persons who ... years have been taken out of their lives, that they would be compensated. Now, if you haven't solved the murder, I mean the person ... or know who did it, why should the state have to pay for something that they didn't do. The state hadn't convicted anybody of doing anything if that person is just laying in the ...

Mr. Munson Mrs. Warren, in your amendment you say "adequate compensation for persons imprisoned for crimes."

Mrs. Warren That's right.

Mr. Munson You don't say "convicted of crime," what about a person that's been arrested and being held in the local jail, for instance, but hasn't been convicted of anything? Are you talking about paying him even though he hadn't ever been to trial?

Mrs. Warren Well, I'm thinking about that person that has actually been convicted, I think ...

Mr. Munson I know, but that's not what it says. It says "imprisoned."

Mrs. Warren Well, I'm talking about a person that has been imprisoned for something that they didn't do. Have you proved that these persons didn't do it?

Mr. Munson No, I'm talking about a person who has been imprisoned and has not obtained bail and hasn't even been tried. Are we going to pay him also?

Mrs. Warren I think that if ...

[Discussion continues on this amendment.]

Further Discussion

Mr. Fontenot Mr. Chairman and fellow delegates, I rise in opposition to this amendment. Not so much for the meat of the amendment, I'm not against compensating innocent people who have been put in jail but I am against putting this in the constitution. When you say "the legislature shall provide for adequate compensation," I don't think this is absolutely required in our constitution. If the legislature so desires it can do on its own. We don't have to mandate them to do it. Secondly, the point I was trying to raise in my questions to Mrs. Warren, right now I don't have the statistics with me, but out of all the crimes committed in the United States or in our state or in a big city or a small city, many of these crimes, I don't know the statistics, but I would venture to say at least half of them go and there's not even an arrest in one of these crimes. Now, out of these half where there are arrests, how many are subsequently brought to trial? Just to be safe I'd say another half of those are not even brought to trial in the first place. Now, out of these that are brought to trial, a lot of times there's a plea bargain or a lot of times there's a plea bargain in which a guy would plead guilty and get a much lesser sentence than he was supposed to get. A lot of times the D. A. just kind of nol-prossed them so he never goes to trial in the first place, then a lot of times these people are proven innocent. What about the victims of all of these crimes? There's rape victims, there's murder victims, people are shot and disabled for the rest of their lives. Are these persons compensated when criminals are not brought to justice? Should the state compensate these victims when there is a crime proven but there is no guilty party? I think if you're going to compensate these people which are more rare than the ordinary occasions where there are victims of a crime and there's no criminal punished, I think

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this amendment would compensate for more rare occasions than the more ordinary occasions; so we're going to compensate these individuals. I think we ought to compensate every victim of a crime. If the legislature wants to do it, I'm for it but I'm not for just compensating these individuals and not compensating victims of crimes. That's why I rise in opposition to this amendment. I hope that you can see my point and I hope we can have to put in words like this in our constitution. You're opening the door for all kind of other amendments to provide for special interest groups. I yield to any questions.

Question

Mr. DeBlieux: Mr. Fontenot, now I understand your expression was because we didn't compensate the victims of other crimes that we should not compensate a person who was convicted of a crime and suffered imprisonment or something of that sort for the damage that he has suffered. I just wondered how would your denial of compensation to somebody who has been convicted and spent time in prison for a crime that he has committed offset anything about other people who have been guilty ... that is not guilty, but suffered damages as a result of crimes against them, murders, brutal ... How can you offset that? Just because you want to take care of one section in society, does it deny you the right or privilege of taking care of something else if you're not able to? I'd like to ask you this; do you know that there is a law on the books already to compensate those people which you are speaking about?

Mr. Fontenot: Well, if there is a law on the books already to compensate those people which you are speaking about, then I don't see the need for this amendment.

Mr. DeBlieux: That's right.

Mr. Fontenot: That's exactly my point. Why should you put things like this in the constitution when you have laws already on other related subjects in the statutes? Like I say, I'm not for or against giving these individuals compensation. I'm just saying that it ought to be in the legislature's hand, not in the constitution.

Further Discussion

Mr. Newton: Mr. Chairman, fellow delegates, I'm in opposition to this amendment. I think it's strictly a statutory proposition. I'm in favor of providing compensations for people convicted of crimes of which they are subsequently shown not to be guilty, but that's a matter for the legislature to do, and that's not what this amendment does. This says "for persons imprisoned for crimes." Now they could be put in jail pending trial and then what happens? Suppose the legislature provides a high schedule of compensation and says that the police jury has got to pay it, so somebody is put in jail. The district attorney is going to have to prosecute that case as hard as he can to try to get a conviction so that the person is not going to have to come up with compensation for these people, and I think that's going to create problems. I can foresee a situation developing where the district attorney is trying to get hell to get a conviction and the guy that's in jail has filed a civil law suit trying to prove he's innocent so he can get compensation. I just think this type of thing addresses itself to the legislature and not to the Constitutional Convention.

Mr. Newton: Mr. Chairman, I think that the person who is not going to have compensation, subsequently not to have committed. Can you foresee where this would bring about civil suits?

Mr. Newton: That's exactly what I'm talking about.

Mr. Chairman: All right. Let's assume that a

man was convicted, he was sent to prison. Let's suppose that he was guilty; several witnesses died or something, so he comes back three years later and he files a civil suit. Let's suppose he gets a jury trial --- maybe it's not even in the same jurisdiction, and that jury decides that he was erroneously convicted. Would he be entitled to compensation under this?

Mr. Newton: Well, I assume that's the type of problem that I'm glad you're pointing out.

Mr. Arnette: Autley, don't you think that there's enough statutory material in this Bill?

Mr. Newton: Well, I don't think there's enough statutory material in this Bill.

Mr. Arnette: Don't you think you're all right?

Mr. Newton: Well, I'm not going to try to define it, but this has so many problems that we can't resolve them in this convention.

Vice Chairman Casey in the Chair

Mr. Denberry: Mr. Newton, have you read the definition of the word "imprisoned" as opposed to the definition of the word "jail" used as a verb, do you recognize that there is a distinction between the two?

Mr. Newton: I recognize that there is a difference between the two. I see that you've got Webster's there.

Mr. Denberry: Well, as I understand the rules of this convention, and correct me if I'm mistaken sir, that under the Style and Drafting Rules we are to use Webster's dictionary as the proper definition point. If I were to tell you that the word "imprisoned" means sent to prison, and the word "jail" means sent to jail, would you agree that your argument is not as strong as it was previously?

Mr. Newton: No, I wouldn't because what are you going to do about the guy that is sentenced to jail and subsequently found out that he was not guilty? Are you going to deny him compensation? There are too many problems in this sort of thing to be doing it in this Constitutional Convention.

Mr. Denberry: Do you believe really that this is a legislative matter? Isn't the purpose of this amendment to require the legislature to adopt a law on this subject?

Mr. Newton: I don't think you can require the legislature to adopt laws, Moise.

Mr. Munson: Mr. Newton, suppose we got two people, one of them is sentenced to jail for 90 days, the other is sentenced to 90 years. Let's say ninety-nine years, he's in jail for 90 years and then he gets out. What would prevent Mr. "B" from saying "I'm the one that executed the crime for which Mr. "A" is imprisoned, and Mr. "A" subsequently gets out and gets paid --- what's to prevent something like that?"

Mr. Newton: Not this.

WHEREAS

Mr. Newton: Mr. Chairman, I think that the person who is not going to have compensation, subsequently not to have committed. Can you foresee where this would bring about civil suits?

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some time there in prison, and then subsequently he is proven, not by the mistakes that what Mr. Munson stated a few minutes ago about two prisoners getting together, but he is subsequently proven not to have committed the crime for which he was sent there. We are balancing the rights of individuals against that of society as a whole. Now, if it is good for society to prosecute criminals and send them to jail, isn't it good for society to compensate people who they have done an injustice to? Now, that's what this amounts to, and when you've done an injustice to a person like that where he has served some time in prison, lost all of his rights of livelihood and everything, don't you think he is entitled to some compensation? Yes, it might be provided by statute, but let's be sure that there our society protects the right of individuals who have been falsely sent to prison, convicted and there for a time for something which they did not do. I think this is a higher right and should be protected over a person who has just been maliciously harmed by some criminal action, and I ask you to support the amendment.

Questions

Mr. Burns Senator, what concerns me in this amendment, you say "which they are proven subsequently not to have committed." Proven in what manner that they were innocent --- they didn't commit the crime? By a court hearing or ...

Mr. DeBlieux Mr. Burns, the legislature would have to provide for that. That's where your statutory legislation ... We are only putting here the policy, the policy of the right of the citizens of this state to protect the rights of innocent people, and therefore it would be up to the legislature to implement how it must be done.

Mr. Burns All that's stated in this amendment is that "the legislature shall provide adequate compensation." They don't say anything about that they shall provide for the method of proof.

Mr. DeBlieux I think that part of that adequate compensation is to provide how it is to be determined that they are entitled to this compensation. That's part of the legislation. This just sets up the policy.

Mr. Burns Don't you think it would be better if you would state that in here?

Mr. DeBlieux Well, it could but you might add more words to it. I think that could properly be taken care of in the legislation.

Mr. Fontenot Senator DeBlieux, you said your self in these other cases it is in the legislature, isn't that correct? I mean compensating victims of crimes, isn't that correct?

Mr. DeBlieux The point that you raise is already in the statutes.

Mr. Fontenot Right, it's in the statutes already. Now, couldn't the legislature, as I said, compensate these innocent victims in the statutes also? That's the point I raise. Don't you agree with that?

Mr. DeBlieux It could, but we have put a lot of other statutory legislation in the constitution. In my opinion, Mr. Fontenot, and this is a higher right than what you're speaking about, in my opinion, and I certainly think that we ought to mandate the legislature to provide some compensation to these people who have been wronged so much by society which we intend to protect.

Mr. Fontenot You think the right of compensating a victim who is proven innocent is greater than the right of a family to get compensated for an innocent victim of a murder?

Mr. DeBlieux In this particular case, I think

there is because sometimes the families that have been harmed that way, if they can find the individual they have their civil remedies. These people, they haven't any civil remedies; that's what we are giving to them, a civil remedy for the injury that has been done to them. That's all it provides for.

Mr. Fontenot But the innocent person who is let out of the penitentiary, he's still alive where the murder victim is dead, isn't that correct?

Mr. DeBlieux Not necessarily in all cases. Everybody who's been harmed is not necessarily dead.

Further Discussion

Mr. Conroy I requested the floor on this only when it appeared that we had reached the end of the list of speakers, and no one had spoken in favor of this amendment to whom I felt I could address questions as to the drafting, or the method of drafting of this particular section. I am disturbed, not by the concept as much as I am by the drafting of the proposal. Mr. Denney did by means of his questions answer at least one of the questions that I had about the meaning of this section in saying as I understood his questions that "imprisoned" means sent to the penitentiary after sentencing, I gather, but I'm not sure about that. I would feel more comfortable if I understood whether this is intended to cover situations where a person is arrested and then never convicted of any crime or whether it applies only after a person has been arrested, found guilty, and sentenced to the penitentiary. I, frankly, am uncertain about the meaning. I am also disturbed about the relationship of this section, and the section which we adopted waiving the state's immunity from suit. I'm not at all sure that the reading of this proposal with the waiver of immunity doesn't give a direct cause of action against the state for imprisonment for a crime which a person did not commit. Lastly, I'm concerned whether a person who is convicted or arrested say, well, let's say convicted, and charged with several offenses and ultimately found guilty of only one; let's say he's found guilty of felony murder, murder in the course of performing some other crime, but is found guilty only of that offense and sentenced to prison accordingly, and then later it's found that somebody else pulled the trigger on the gun. He was not the person who actually committed the murder but he did commit a crime. Does that entitle that person to compensation under this provision as worded? I go back to where I started. I'm in complete and total sympathy with the concept of the legislature providing compensation where the legislature finds that some grievous wrong has been committed by the state in the course of carrying out the functions of the state. There are times when people are hurt and should be compensated, but I am still very much concerned by the wording of this particular section, and unless some of these questions are clarified in my mind I will have to vote against it with deep regret.

Questions

Mr. Rayburn Mr. Conroy, I, too, am concerned about this language where it says that "a person who has been imprisoned shall be provided adequate compensation by the legislature." Now, what does imprisoned mean? I think this language is poorly written. If it would say "shall be imprisoned after proof found guilty," but suppose a person is placed in jail and it's six or eight months before his trial comes up, and he is proven not guilty. Would he then be able to come back to the state or to the legislature and get adequate compensation for the time he spent in jail?

Mr. Conroy As I said in my explanation, Senator, I think he might be able to, and what disturbs me even more is he might not even have to go to the legislature under our waiver of immunity until he actually gets a judgment and gets them to satisfy

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the judgment.

Mr. Conroy. Now, I understand the whole thing. This ... I'll ask you; you're an attorney. How would the legislature go about providing adequate compensation? I mean it seems to me that that's a judicial question. I don't know; maybe one person would say "I was making two dollars an hour and I stayed in there so many hours," and another one would say "I was making eight dollars an hour" ... I'm just wondering how we would reach a formula to comply with this, and certainly if the language was a little better, I could support it wholeheartedly.

Mr. Conroy. Well, that's the same problem I had, Senator, because it seemed to me that it should be that the legislature would have the authority to determine what the amount of compensation would be. You're raising the same questions I have asked really, and I can't give you the answers to them because I'm asking them myself.

Further Discussion

Mrs. Warren. Well, partly I can ask ... you know I have a lot of coauthors on here; I'll put it like this. I said from the beginning that I was not an attorney. I had the concept and I tried to make it very plain as to what I wanted to get over. What I'm trying to say to all of the delegates in this convention, if you are in sympathy with the concept, let us get together and write something that would be acceptable and explain it out like it ought to be, but let's not put it under the rug and say "I can't go with it because this is not right." I think we need to take time now and try to work it out. ... take that one out, because I'm going to have another amendment coming to the floor.

Amendment

Mr. Poynter. Amendment No. 1 sent up by Delegate Hayes. It's being passed out at this time.

Amendment No. 1, on page 7, between lines 25 and 26, insert the following:

"Section 26. Prohibited Penalties

"Section 26. No penalty, other than that provided by laws, shall be applicable to any conviction for an offense."

Explanation

Mr. Hayes. Mr. Chairman, ladies and gentlemen of the convention, this same section that I'm proposing now has been explained, and I think there was some opposition to the committee because they thought it was not germane to the section, or they thought it might defeat the section; so I'm now proposing it under a new section which makes it even more difficult, but at least it will not affect the section. We have a problem in the State of Louisiana. One that worries me a lot, and I'm going to take this time out to explain it again, and I think it's necessary that I do this, because this is a problem I think that everyone has, but no one so far has mentioned this, and I think it's necessary that I go back one more time and explain it. Now, it will be up to the delegates to do whatever they would like to do after I get through explaining it.

We have a bad situation in the State of Louisiana involving a relationship or correlation between the insurance companies and the insurance policies. The purpose of this section will be to straighten it out. Now if you want to straighten it out, then you vote for the section. That's all it's for. I want to explain it. The sole purpose is to straighten out the insurance industry in the State of Louisiana. What is happening now, the state is permitting a "Henry Huddle" in the insurance business. The insurance companies are getting together on the people and charging them individual

rates. You are rated by the number of traffic tickets you get, so one person will pay two and a half times his standard rate which means he is paying somebody else's insurance premium. Let me tell you what that means. All right. You might be fortunate enough to have insurance on your car. Well, this is good. You're driving from here to Shreveport. You have no more insurance than the people you meet between here and Shreveport. Every car you meet without insurance, that means you don't have it ... you have that much less insurance. All right, so here what we can do in the state. If everyone in the state could get insurance at a standard rate, it would mean that more people would carry insurance. Insurance would be cheaper for everybody, but the way we are rating insurance now by the use of traffic tickets, and the use of a state-owned computer that's selling the people's records to the retail credit people for two dollars where they in turn sell it to the insurance company, I think is unfair and is unjust to everybody. What my amendment does is simply this: It says "no penalty other than that provided by law shall apply to any conviction for an offense." It's not saying but one thing, and I've talked with judges in the traffic courts in the New Orleans area and the Baton Rouge area about the same thing and they're all in agreement. Whenever you go to court and you have been fined by the court, they're not interested in this fine extending any further than what they have proposed.

Now, let me tell you what can happen here, and I'm going to give you these same figures that I have given you once before. A standard liability policy on two automobiles should cost you approximately two hundred and sixteen dollars. When you are penalized a hundred and fifty percent, that same policy would cost you five hundred and forty dollars. Now, you think about twenty-five percent commission on two hundred and sixteen dollars and five hundred and forty dollars. Take together the collision and the liability on a hundred and fifty percent increase could cost as much as twelve hundred and some dollars. So the commission on this would run something like three hundred dollars. If this amendment is adopted, the insurance premium would be more or less like a group policy, provided for in any system where group insurance is provided, everybody could get insurance at about the same rate and all these inequities would not exist.

I will yield to questions at this time. I think I could come through all right.

Questions

Mr. Weiss. Delegate Hayes, as I read this section, would this prohibit professional organizations from instituting such procedures as disbarment for the attorneys, or suspension of license for physicians when they are convicted of some offense? In other words, this offense as determined only by law could then apply, and therefore, they could not either be disbarred or suspended license and such as that, is that correct?

Mr. Hayes. Well, I'm assuming that if the courts could do whatever they wanted to do to you. If you are convicted by a court or if you serve your time or your sentence, whatever was imposed by that court, no one could do anything else to you as a result of that.

Mr. Weiss. Would it suspend license of physicians when they are rendering a judgment in some other criminal or civil case?

Mr. Hayes. I'm assuming that if you understand your question, but I'm saying that once in a while in jail or if you pay a fine, nobody else can fine you for having paid that fine. O.K.

Mr. Weiss. Now, would it suspend license of attorneys when they are rendering a judgment in some other criminal or civil case?

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disbarment of lawyers who have been convicted of a crime, and your provision in my opinion would prevent the Supreme Court from later bringing in a disbarment against that guy because that's a penalty also. But in the thrust of your remarks, I think your amendment is faulty for that reason, but on your main point, that of insurance premiums, if I'm the guy that's paying that two hundred and twenty-five dollar premium, and I don't have any traffic tickets, and I haven't gotten arrested, and I haven't had any wrecks, and I keep on paying that same two hundred and twenty-five dollars, but there is another guy with five accidents and three charges of D.W.I., and all the other things that he can have in this state that causes him to be a special class. He is probably going to cost that insurance company some money, because of his driving record they can see that he is, they raise his rates. Isn't what you propose that everybody pay the same premiums; aren't you charging the safe drivers more in order to cover those who don't drive safe, and don't I come out worse if your amendment should pass?

Mr. Hayes I'm glad you asked that, Mr. Staggs. You'd come out better because more people in this way would carry insurance. Now, if you would insure all those people who are walking around without insurance and having accidents -- I looked at the weekend holiday we had off on Labor Day, and I saw a lot of people who had accidents, a lot of people were killed over that weekend period, and I wonder how many of those people had these accidents and didn't have insurance to cover these people. Now, I see a lot of people go in, and you charge them nine hundred dollars or a thousand dollars or maybe twelve hundred dollars when he should be paying four, what he'll do is not buy the insurance. What he'll do then is go have an accident without insurance of which the state does not require you to have any insurance. You run him out of the market. You guarantee insurance companies a market, and what they do is run away ...

Mr. Staggs George ..

Mr. Hayes Yes, sir.

Mr. Staggs Does your amendment before this house at this time require that everyone in the state have insurance on his car?

Mr. Hayes It does not require, and in the state right now it does not require it, but what I'm saying is if you would put it at a low rate, that's a low enough rate that people could get it, I believe more people would take it, and if more people would take it, it would bring the rates down. Now, I can ... put a nickel in a telephone all over the state and get a telephone call. You get standard rates for, in more sections on your house insurance, the basic price is the same. On a group policy whether you have cancer, heart trouble, diabetes, or whatever you, interest rates are the same in that group and they are cheaper that way because people will group up in order to get them, but you don't isolate a person because he has diabetes and make him pay more money. Yes, sir.

Mr. Staggs Do you believe that I would vote for your amendment if it did require everybody to have insurance, and that I cannot vote for it if it doesn't? Do you understand me?

Mr. Hayes The state as it stands right now, Mr. Staggs, I believe, I would like to put it attractive enough right now since the state doesn't require everybody to have insurance--that allow you to have one wreck, which is bad. After you have one wreck and get a D.W.I. they have some SR22, they will go then and require you to have insurance, which is bad. I believe it would be good if everyone could have insurance, but what I'm saying is the people who can and want it can't get it because it costs too much; I believe--that if we would have my amendment and make it reasonable enough for everybody, the eighteen year olds on down, the people who have driver's license would get it, I

think it would be cheaper for everybody, and it would be better, and it would be more attractive which I think would reduce the rates, and I feel maybe that this should cause ...

[? ... is Question ...]

Closing

Mr. Hayes H.R., now you can come on with your questions.

Questions

Mr. Goldman Mr. Hayes, I agree in the concept, but I think when the ... I don't know whether this can be done constitutionally. When the legislature passed the law making necessary either insurance or the ability to pay ten thousand dollars or more, whatever that law says ... in driving a car, it didn't make it necessary to have that before you bought your car, and that's where the problem is. Don't you agree that if something like that could be done where before you could even buy a car, you had to have the insurance, then that would take care of this? Otherwise, I don't see how this would take care of it.

Mr. Hayes I agree that we should be able to ... you should have insurance before you buy a license tag, but I think the insurance should be low enough to buy, when you get to that point. I think if insurance was a standard rate, and you ... this was required by the legislature, but the legislature refused to do this after you have an accident, say if it's a hundred dollars then they require you to put up a hundred dollars with the state, and if somebody sues you within a year's time, then you can go claim the hundred dollars. They don't give you the hundred dollars or two hundred dollars.

Mr. Goldman Mr. question is could you get that provided for in the constitution?

Mr. Hayes I don't know if I can get this provided, but I would be willing to do anything that would help the citizens, in fact all of the citizens of the state, and if this section could help the people in the state, all of the people in the state get insurance, I'd be willing to amend it to include that everybody carry insurance, but at the same time, we would have to have a market or somebody in the state to provide the insurance for the people.

Mr. Chatelain Delegate Hayes, I'm in sympathy for your objective. I know what you're shooting for, and I'm in sympathy with you, but I'm having a little problem in trying to interpret what would happen to a situation where a driver's license has been removed for some penalty involving a traffic violation or something of that nature. What does your amendment do for that, Mr. Hayes?

Mr. Hayes This is what I feel the penalty should be, Mr. Chatelain, instead of permitting the insurance companies to go around and take these traffic tickets that people go down to the window and pay to somebody, or where they plead guilty, two of them I have here where if you plead to two traffic tickets that cost five dollars, that's seven points. Well, seven points on two cars would run you a seven hundred dollar penalty per year for three years which is two thousand and something dollars, around twenty-one hundred dollars, you see. If your penalty is of such nature, I think that the judge should suspend your license rather than involve you in insurance. What you need is the protection for the people, and I think you should have the insurance.

Mr. Rayburn Mr. Hayes, I don't believe your amendment does what you are attempting to do. If I read the amendment right, it says, "No penalty other than that provided by law." Well, the law now is that if you are convicted of D.W.I. that before you can get your license reinstated, you shall have insurance, and that means that you shall have to go

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a bad risk, that's the present law.

Mr. Hayes Mr. Rayburn, I have to go in the assigned risk plan and I have never had an accident, and I've been driving thirty-five years. The insurance industry, they permit them to do anything to you they want to. I told you they let them call a "henry huddle" on you anytime they get ready and decide anything they want to decide. It's only at that point do they require insurance. I think what you have there is not the case. Now, what about the two ... you go into the assigned risk anytime they decide to cancel your insurance, and you can't get insurance no other place, you go into assigned risk, the only place you can get insurance.

Mr. Rayburn You either go there or go in what's called the "surplus line." That's right.

Mr. Hayes Now the surplus line means you go into a non-rated agency who is not even admitted to do business in the state. You have these two alternatives because of the way we do business here in the State of Louisiana in the insurance industry.

Mr. Rayburn I don't believe this amendment would correct that, Mr. Hayes.

Mr. Hayes But, you realize -- I'm sorry I can't answer your question -- but the situation does exist.

Mr. Rayburn I realize it is a serious problem, and I'm confronted with it practically every week.

Mr. Hayes I would like to ask a favorable vote on this amendment. It might do some good.

Chairman Henry in the Chair

Amendment

Mr. Poynter Amendment No. 1 [by Mrs. Brien], on page 7, line 16 add the following section: (the amendment's now being passed out)

"Section 26. Consumer Education and Information Council

Section 26. The legislature shall create consumer education information councils which shall provide consumer representation for the interest of consumers throughout the state in hearings before any board, commission, department or agency of the state, or any political subdivision thereof, and which shall exercise such other powers and duties as are fixed by law".

Explanation

Mrs. Brien Mr. Chairman and fellow delegates, once more I come before you to ask you please to consider my consumer proposal. The first time, it was defeated 52 to 53 with 27 delegates absent. So you see many of you really think my way, to give protection to all our people. All I really want with this is to give consumer protection a firm stand in this constitution so it can progress throughout the state, protect our people from bad guys, escape faulty products, and shady workmanship. Every person should know there is a Consumer Protection Office and a Council somewhere in their area to keep them informed of buy and sell practice. In some schools they are already teaching all about where we will make more progress when again we

void a few days ago, "I would never talk of ... to give every individual any right they deserve," and that's what I mean when I talk about "consumer protection." I ask you please to vote for this proposal,

and this may be a new section so I need 67 votes to adopt it. Please consider that.

Question

sumers should always be a privilege, but I don't see where this has any ... do you think this has any business in the Bill of Rights because a consumer has the right to refuse to purchase anything if the price is too high, or to negotiate or anything else? I can't see where this has any part of the Bill of Rights.

Mrs. Brien Well, I think we are talking plenty about protection of the people in the Bill of Rights, and maybe this is the greatest protection our people deserve.

Amendment

Mr. Poynter Mr. Avant, do you still want it in the same place. You want to just add it as a Section 26?

It's set up to come on page 7 between lines and to ... be consistent with what we're doing, and make it, add it at line 16 and call it "Section 26." "Section 25 or 6. Powers Not Specifically

Granted Section 26. All powers not specifically granted to government by this constitution are reserved to the people, and government has no implied or inherent powers".

Explanation

Mr. Avant Mr. Chairman and fellow delegates, this is a simple amendment of a principle that is very well recognized. A constitution such as the one we are drafting is a compact or a contract between the people and the government which they set up. The government which they set up is a government, of delegated powers. In other words, we have gone through this constitution, article by article, and we have surrendered to government, or proposed to the people that they surrender to government, certain powers. Those are the only powers that the people are giving to government. The counterpart to this amendment is found in the Tenth Amendment to the Constitution of the United States which states very simply that those powers that are not granted by the constitution to the national government or that are not specifically withheld by it from the states, are hereby granted to the individual states or to the people. Now, this is simply a corresponding provision and in our state constitution which we are proposing, would vinyl that the powers of government are derived from the document, from the constitution, and that a

general pool of inherent or implied powers under which it can do anything it sees fit to accomplish. Very simple, very plain, to the point, I think very easily understood. I ask your favorable vote on this.

the Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen, this convention, I hope you understand what this

amendment. I hope you understand the point. In addition to that, of course, it would

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specific authorities are not granted to the local governments and all other agencies of government in the constitution, the legislature could not enact laws with respect thereto. This is really a bad, bad, bad, bad amendment. I urge you to reject it.

Question

Mr. Roy Mr. Perez, do you know that you and I agree for the first time since we've been here?

Mr. Perez Isn't that wonderful?

[Laughter and applause in the audience.]

Closing

Mr. Avant I'm going to have to disagree with my learned colleague, Mr. Perez. The amendment does not do what he says it does. The amendment simply says that government, in order to act, must be able to point to some basis in the constitution which authorizes them to so act. There's nothing unreasonable about that. It should be self-evident. We are here, entering into a compact or a charter or a covenant or whatever you want to call it, between the people and the people's government. Now, it is not unreasonable to simply require in that contract that government operate within the confines of the contract, and that when it chooses to exercise power that there must be some constitutional basis on which to support that power, and that government will not be running around willy-nilly, assuming and implying that it has powers which the people have not delegated to it. Now that's all it does. It does nothing else, nothing more, nothing less. I ask your favorable support for this amendment.

Questions

Mr. Derbes Mr. Avant, the police power of the federal constitution is specifically provided in the federal constitution, is it not?

Mr. Avant So is it specifically provided in this constitution.

Mr. De Blieux Mr. Avant, as you recognize by this amendment that if there is not a specific provision in the constitution that the legislature cannot act upon a subject. Isn't that correct?

Mr. Avant I don't recognize that at all, Mr. De Blieux. It speaks of powers. The legislature must have been given the power to act in that area.

Mr. De Blieux Well, that's what I'm talking about. If we can't point to some specific provision in the constitution giving the legislature the right to act, they would not be able to act, isn't that correct?

Mr. Avant That's generally correct. What's wrong with that? They have to be able to look to the constitution and say, "This is our authority; this is on which we act."

Mr. De Blieux Do you recognize that right now that the actions that the legislature act upon, that about seventy-five percent of them are not in the constitution as you would advocate they'd have to be?

Mr. Avant In detail, you are probably correct, but I'm sure that there is a grant of power in the constitution which can be pointed to and under which the legislature is acting.

Mr. De Blieux Do you recognize that under this particular provision, there would be very, very few articles where you get through this constitution, the legislature could act in?

Mr. Avant I don't recognize that any more than I recognized your first statement, Senator De Blieux.

Mr. Dennis Mr. Avant, when we said in the first three articles that the legislative power is vested in the legislature, the judicial power is vested in the judiciary, and the executive power is vested in the executive department. Weren't we necessarily saying that there are some implied powers in these branches of government?

Mr. Avant ... no, I don't think we were giving them a grant of inherent and implied powers.

Mr. Dennis Well, if we weren't, why did we say that?

Mr. Avant I didn't hear you or that.

Mr. Dennis I said, "if we weren't, why did we say that?" Was that a meaningless phrase?

Mr. Avant What phrase are you referring to?

Mr. Dennis To say that these powers are vested in these branches of government.

Mr. Avant Oh, well, that simply meant, Judge Dennis, that the legislature shall exercise those powers that are legislative in nature and will not exercise the judicial powers, and that the judiciary will exercise judicial powers and hopefully, not legislate.

Mr. Conroy Mr. Avant, in the article on Legislative Powers, what specific powers do you feel we gave the legislature to do anything at all?

Mr. Avant Well, we are not through with the constitution. We're going to give them the taxing power; we are going to give them other powers; we're going to give them many specific grants of power, some of which will be in general terms, but what this amendment does, Mr. Conroy, this is aimed at governmental action in those areas where there is no constitutional basis for government to act. There is no power then granted.

[Amendment 13-99, Section 26, as amended, read.]

Amendment

Mr. Poynter The next set of amendments is sent us by Delegate Tobias.

Delegate Tobias, if it's all right with you to be consistent, we'll make it on page 7, between lines 15 and 16, insert a Section 26.

"Section 26. Right to Property
Section 26. Except as otherwise provided by this constitution private property shall not be taken or damaged, except for a necessary public purpose, and unless just and adequate compensation is paid. The right to trial by jury to determine such compensation shall not be denied."

Explanation

Mr. Tobias Mr. Chairman, fellow delegates, I've asked that Section 4, as we have amended it, be distributed along with my proposed amendment. Two weeks ago today I stood at this podium and urged the defeat of Section 4. At that time I used the phrase which I believe is still appropriate to Section 4. That phrase was "verbal garbage." The purpose of this amendment that I offer is to in effect reopen the question of Section 4. Section 4 as adopted... no person, no average individual can fully understand what Section 4 says. It's extremely, extremely cluttered. It says what my amendment says in sum and substance. Here's how it says that. The first phrase of my amendment, "except as otherwise provided by this constitution," that takes care of the last sentence of Section 4. The last sentence reading, "the provisions of this section shall not apply to appropriation of property for levee purposes." As I understand it, the Local Government provision has a provision for levees, allowing this; so this would take care of that.

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rather, now that you have had a chance to reconsider, what portion do you oppose in this right to property?

Mr. Abraham I think that a lot of the language now that I've had a chance to look at the whole thing as it is written now, I don't like the way it's written; I think a lot of the language needs to be

Mr. Weiss Can you be more specific?

Point of Order

Mr. Pugh I voted for Mr. Tobias's suggestion. I am, however, now interested as a point of order. Are we now going back to Section 4 for every amendment that anybody wants to put on Section 4, before we go to the amendments that are up there on the sections yet ahead of us?

Ruling of the Chair

Mr. Henry We hadn't decided yet; that's what we are trying to decide. Now here is what we did. We voted, or you voted, to suspend the rules for the purpose of reconsidering the vote by which this section was adopted. So what's being debated now is whether or not we are going to reconsider the vote. It will take a majority of those present and voting to get past this hurdle, Mr. Pugh, fifty-four to fifty-five, whatever it is. If that vote carries, then we will go back into all you can do anything you want to do. You can amend it and amend it or try and try and try; we could be on it for thirty minutes or three days. But it's just like we are starting anew, yes, sir.

Mr. Pugh That's all I want to know is whether we are just going to talk about Mr. Tobias' or whatever anybody else wants to bring up.

Mr. Henry Whatever anybody else wants to bring up.

Mr. Pugh Thank you for the clarification.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I speak in favor of reconsideration of this section. As it is submitted, I am not proud of Section 4. I submit that this convention is capable of doing a much better job of Section 4. While ordinarily I would like, as most of you, to shorten this procedure, I feel that as submitted, Section 4 may endanger the passage of this complete part of the constitution. I speak in favor of reconsideration. Thank you.

Further Discussion

Mr. Duval Fellow delegates, I realize we are all impatient. This is, of course, a sensitive issue to many of us. I merely feel this, that when an error is made or some of us feel like an error is made, we shouldn't merely for the sake of expediency forsake the opportunity to go back and remedy the error. Now, I think this is important. As you recall during the debate on this section, the committee said the "quick-taking" would still be allowed. I think there is a serious question as to whether the highway department could now quick-take when you say, "The issue of whether the contemplated purpose be public and necessary shall be a judicial question and the final determination as to necessity of the location shall be made after due consideration of the loss of aesthetic or historical values without regard to any legislative assertion." Now I want somebody to tell me what that means. I want somebody in all candor and honesty to specifically tell me what that legally means. I will challenge them when they do. I think it certainly could be constrained to mean that necessity has to be litigated before any taking occurs. Therefore, the highway department you would have no ... government does have to operate...this is all real nice

but we do ... people clamor for highways; they want roads and streets. With this type of language you could really muddy up the entire operation of government. I think it could be interpreted that way. I think it would do away with quick-taking. I think it could be interpreted that way. I think the primary right is that people whose property is taken are paid complete and full compensation. I think we've certainly said that. We say too much here and I think it's indefinite. I think we ought to reconsider it. I realize it's taking time. I think it's a mistake. I think we've been unintentionally misled, and I think we ought to remedy that language. Thank you.

Further Discussion

Mr. Rayburn Mr. Chairman and fellow delegates, I rise in support of reconsidering this particular section. I can see now where the progress of our road system in this state could be hampered to a great extent by the words "aesthetic and historical value." I have seen it slowed down to some degree under our present law. If you place this in the constitution, you're going to see more litigation than you've ever seen. Maybe this big oak tree out here right on the right-of-way has a historical value -- about three or four people running into it and getting killed. They say "No, don't dig it up because Uncle Charles and Aunt Abby got killed there fourteen years ago. Let it stand." As far as this word "aesthetic," I might think that something is really aesthetic and you might think otherwise. I do not believe this is got no business in our present constitution. When you're going to enter into progress and build better roads and better highways, please don't hamstring the people who have the powers to do that by keeping them in litigation day in and day out. I would hate to see this particular language left in this section. I think everyone is entitled to their day in court. But, I think you can go a little too far sometimes and you can hamper progress by going for far more immoderate "aesthetic value." I don't really know what that means. I've asked two or three people and they hadn't told me. I think it's a difference of opinion ... and "historical value." Certainly if we've got to have some right-of-ways, we just got to have it or not have a better road or not have progress. I don't know where the process of making better roads and make a little history by not killing so many people on the roads we have today.

Further Discussion

Mr. Roemer Mr. Chairman and fellow delegates, I rise in opposition to the attempt to reconsider this particular section. I, as do you, feel oftentimes that we could have done a better job. Or to put it more succinctly and perhaps more honestly, I feel that we've done a job different than I would have done it if I had written it alone. But that in itself, after hours and days of debate is not a legitimate excuse, as far as I'm concerned, to reverse ourselves, go full circle, and begin again to debate an issue that will be debated the rest of this day and on into tomorrow -- an issue that we have given far, far enough time to debate thus far. Now, I have a warning for you delegates who come to debate by amendment by amending the process of building Section 4 as we now have it. Your ox can and will be gored, too. Your ox can and shall be gored also. This section is more than one concept. It is a coalition and a collection of various concepts, including the word "necessary," including the words "public purpose," including the words "aesthetic value." If you think that you are going to go back to this whole section and not have your particular concept challenged, I submit to you, you better rethink through this whole process. I think we can live with Section 4 because it says clearly, under the law, that one of the vested rights that we have in this state is the right to be compensated adequately and justly for our property and that property shall not be taken except for a necessary purpose, a necessary purpose. My gosh,

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Do you think government... the [Lyndon B. Johnson shrine? Do you think that is necessary?

Mr. Staggs You would ask that question of me. I'll have to answer that it may not be necessary.

Mr. Jenkins Tom, you know one of the problems we've had with this proposal is the misinformation and the misstatements by people in authority, such as your mayor. If your mayor says that a jury could determine the necessity of the taking, isn't it true he must not have read the proposal because jury trials are allowed only with regard to the amount of compensation?

Mr. Staggs I think the mayor was reading the letter from the city attorney. The city attorney said that the language that said that the question of... that it shall be a judicial question and determined as such without regard to any legislative assertion.

Mr. Jenkins Doesn't it state though that there is a right to trial by jury to determine such compensation and no other right to trial by jury, as stated?

Mr. Staggs I believe they don't want even a trial by jury on compensation, Louie; that's exactly true.

Mr. Roy [Mr. Jenkins] Well, what does the thing say, Tom, never mind what you...

Mr. Tate Mr. Chairman, are there any other speakers?

Mr. Henry There is somebody in line to move the previous question in case you don't.

QUESTIONS

Mr. Conroy Mr. Roemer, if we reconsider this section and, say, adopted Mr. Tobias' proposal, do you feel that after that that each sentence that was deleted would be the subject of another amendment, a proposed amendment that would be debated here in the convention?

Mr. Roemer No question about it, Mr. Conroy. This section was built by us, men and women, and it's going to be debated by us, men and women, I submit, concept at a time.

Mr. Tobias' Amendment

Mr. Staggs Mr. Chairman and fellow delegates, after the Section 4 was adopted and was printed in the newspapers of the state, I received the first of several letters from city officials concerning what this convention had done to the operation of cities like yours and mine. I brought one of the letters to the microphone in order to read from it what the city attorney of my city wrote to the mayor of my city. "We have pretty well gotten down in the jurisprudence now to determining that if the expropriating authority thinks that there is a public need for the property, that it is necessary." It seems to me that this opens a Pandora's box, if a jury in the community is to determine whether it is necessary or not. For example, this would raise questions on street widening as to whether this particular street was necessary to open up or not. If we got involved with the jury on this issue, it would raise some tremendous problems. Later he says, "The expropriation laws of this state, at the present time, and the jurisprudence, at the present time, is such that, while recognized that expropriation is an extremely powerful weapon, are in a stable condition and lawyers representing both the plaintiffs and the defendants are in the position to advise their clients as to what their rights are and what might happen." I am aware of no particular arbitrary abuse of expropriation on the part of any authorities in the State of Louisiana. The defendants have the court to protect them and this the courts have done more than adequately. In my opinion. At the present time, I see no further need for protection of the plaintiffs, although I quite frankly state that I have represented solely the expropriating authorities. What my mayor said to me was that he and the other members of the Louisiana Municipal Association are faced with some very grave problems. In the future under this language in the constitution and that it raises serious questions in their mind as to whether this is not an overwhelming issue that city governments and parish governments will have to face when the time comes to decide on this constitution. I believe that Mr. Tobias has quite properly brought to the convention a motion to reconsider this language. I will support his motion to reconsider.

Questions

Mr. Staggs Mr. Conroy, did you know that the language in the constitution that was adopted was the same as the language in the constitution that was adopted?

the [Lyndon B. Johnson shrine? Do you think that is necessary?

Mr. Staggs You would ask that question of me. I'll have to answer that it may not be necessary.

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Mr. Staggs I think the mayor was reading the letter from the city attorney. The city attorney said that the language that said that the question of... that it shall be a judicial question and determined as such without regard to any legislative assertion.

Mr. Jenkins Doesn't it state though that there is a right to trial by jury to determine such compensation and no other right to trial by jury, as stated?

Mr. Staggs I believe they don't want even a trial by jury on compensation, Louie; that's exactly true.

Mr. Roy [Mr. Jenkins] Well, what does the thing say, Tom, never mind what you...

Mr. Tate Mr. Chairman, are there any other speakers?

Mr. Henry There is somebody in line to move the previous question in case you don't.

Further Discussion

Mr. Tate Well, at the conclusion of my remarks I will do it. I will try to speak briefly. I rise in support of the motion to reconsider. I am somewhat amazed at the argument that if we made a mistake, no matter how bad it is, we should not reconsider it. We are writing a constitution which we hope will endure for four or five or ten decades. If we have made a drastic mistake, we should seriously reconsider it. Now, the argument is made it'll reconsider everything. Of course, you can't reconsider it unless at least two-thirds of us think it's serious enough, unless sixty-seven think it's serious enough to reconsider. This, brother and sister delegates, I believe, is one of those issues that is that serious. It's one of the few issues in this constitution that I have some reservation, for instance, what I could live with, as a matter of adjusting to government, and voting for or against. There are many others in this situation; it's very serious. Local governments, highways, schools, parks, public improvements, utilities are faced with the question of unknown dimensions. They mention about necessity. Do you realize that means that in every single sort of school taking you will get into issues? Do they need four grades there? Do they need six grades there? Should it be on this tract or should it be on this tract? Do you realize that it probably means that they will probably have at the same time as they are trying compensation before a jury this same issue dragged on and on and on. So, there is a very serious issue. I want to urge you seriously to reconsider this. Listen to the debate on the merits. The leaders and local government and the many people who are concerned with it, I think, deserve a fuller hearing that we may have upon a reventilation of the issues in the light of what we finally adopted after amendment after amendment, making a hodgepodge which has been, in my opinion, justly criticized. And with that, Mr. Chairman, I move the previous question.

Mr. Staggs Mr. Conroy, did you know that the language in the constitution that was adopted was the same as the language in the constitution that was adopted?

Mr. Conroy Yes, I did, Mr. Staggs.

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Mr. O'Neill Well, I don't remember you being here, sir. I remember all these arguments having been raised then and having been dealt with then. Do you know that I hold a California case in my hand which says that the word "necessity" is not to be used in too limited a sense. It means want and expediency, for the interest or safety of the state.

Mr. Tate Well, Mr. O'Neill, I would say that if the California case says that, they are defining "necessity" as we would define "public purpose." What concerns me is that "public purpose" and "necessity" are taken as two different things and until now we have thought "public purpose" means it's necessary for a needed when needed for a public purpose, they may take. When you say it has to not only be taken for a public purpose, but that it must be a necessary use, you raise issues that our courts have rejected time and time again. When they say they didn't really need that cloverleaf, they should have had an intersection of the highway. They didn't need to take that much land -- things like that that are really property matters, in my opinion, not for judicial determination. But, incidentally, if the legislature later wanted to add "necessity" that would be another question. But to say, right now, we are going to freeze "necessity" in the constitution and possibly bring on all of these terrible consequences that our local governments fear, I think is something that deserves our reconsideration.

Mr. Stinson Judge Tate, aren't you a little concerned over the fact if we keep on having memorial parks and this, that, and the other, we are not going to have any property on which to raise food supplies? Every time they go down on a federal highway they think they've got to dress it up and look beautiful. I'm concerned, aren't you, that if we don't stop some of it and prove it's necessary, that there is going to be a shortage of land belonging to private industry and private people to support our population and the rest of the world as we are required to do. Your answer should be yes.

Mr. Tate I'm of course concerned, Mr. Stinson. But, I'm also concerned with the needs of the people for schools, highways, parks, in these cities I have recently had the misfortune I've recently changed the place I worked from Ville Platte to another place. I wish ... you can appreciate things like parks that are needed some places. Are you for juvenile delinquency, Mr. Stinson?

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I had the pleasure of offering the first amendment to this specific section when it was initially placed before the floor. I had the pleasure of speaking on this section at the time a determination was made as to whether or not we should adopt it. At the time that I made the latter speech, I indicated to you that there were some things in that section that I did not agree with. Quite frankly, I did not vote for Mr. Hernandez's amendment. I nearly fell out of my chair when it was approved. Be that as it may, it was approved by you as a group. I said then and I say now, it would not be difficult to rewrite this section. Any one of a number of lawyers in here could do that. What disturbs me right now, and I like Mr. Tobias' language; I think that's loyal language. I think that's something you can understand. But what worries me right now is I've got some amendments up here to some other sections that I would like for you to favorably consider. I think I have a right to submit those to you before we go back and open up this earlier section. I can't understand that we must now revert back to something earlier. Before I had the pleasure of serving with you, you passed many things relating to the legislature. I've got some thoughts on that. You passed many things relating to the executive. I have some thoughts on that as I do on the judiciary. But I'm not going to send you a bunch of amendments because I'm suddenly here. I'm not going to second-guess this group on

all of these things that it has done. I say, let's go on section by section. When we get to the end, if you elect not to approve the article, and it turns out that the reason you are not approving it is because of this section, then let's address ourselves to the problem as it may then exist. But it's inconceivable. I've got two Lanier amendments here and they are different. Now, if Mr. Lanier can't decide what he wants, how can he expect you all to decide, and have the two of them? In addition to that, I've got another amendment that they don't even have a name on it. Then I've got a blank piece of paper with the section on it and I presume we will have to vote on all of these before we are through. I say there is a time and place for everything, but not in the middle of an article.

Questions.

Point of Order

Mr. Smith We are going into the merits of this thing. I think we're arguing on the motion to reconsider and it looks like we are going far afield.

Ruling of the Chair

Mr. Henry Mr. Smith, the motion to reconsider opens the subject ... the entire subject matter for debate. I think you're right. We ought to decide whether or not we are going to reconsider it or not before we get into the merits of it. But it does open the main question to discussion.

Why do you rise, Mr. Perez?

Point of Order

Mr. Perez Point of order. It was my understanding that Judge Tate had moved the previous question and there were no speakers at that time.

Ruling of the Chair

Mr. Henry Judge Tate had made a motion for the previous question, but he and Mr. Stinson were getting at it so fast and hard, I forgot about it. So, there are no other speakers on the list at this time, and I thought ...

Mr. Pugh I want to tell Mr. Stinson that I didn't intend to speak for or against the amendment. The point I attempted to make, perhaps poorly, was that I think we ought to consider whatever we are going to do after we get through with all of the rest of the article.

Further Discussion

Mr. Hernandez Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to this proposed amendment to Section 4. There is nothing in Section 4 -- I want to get this straight, the amendment is being considered but I am now speaking in opposition to reconsideration, for the reason that there is nothing in Section 4 that hasn't been thoroughly considered. It's been amended numerous times. There is nothing in that section now that hasn't been completely considered and voted on. For that reason, I ask you to refuse to reconsider this section. Now, Senator Rayburn has brought up something in this even though it had to do with my amendment. There is nothing in this, Senator Rayburn, that provides for any long drawn-out controversy. It merely says "And the final determination as to the necessity of the location shall be made after due consideration of the loss of aesthetic and historical values without regards to any legislative assertion." I would so since this has all been thoroughly considered, I am opposed to the reconsideration that's up before us at this time.

Further Discussion

Mr. Stinson Fellow delegates, I also would like to urge to let's vote against reconsidering this. The only argument that's been raised is that the cities and other people want the right to expropriate for

proven necessary. Well if it's not necessary, I think we have plenty of needs that money can be spent, other than making parks. Our justice of the Supreme Court says we need more parks because of the crime rate. I say in the major cities we have a higher crime rate because we have parks. They need money for the police to police those areas. They need money to build more police stations to buy more parks and they can't take care of those that they have. As I tried to bring out in my questioning, our main concern now should be more than ever the fact that we have a shortage of food producing lands and they are taking them every day. We hope that the rich people in this country who are going to go through our richest farm area. When you do that in every state in the Union -- and more people are getting out of the farming business -- we are really going to have a problem on feeding our people. It is no reason when you have a piece of property that you have slaved and earned and you can't build a park and buy a house. Well, if the city's got a hundred thousand dollars and they want to take your place and build a park." Well, if it isn't necessary, I think that you have a right to keep that property. If we don't have that right, we don't have many rights at all. I think that is one of the most important. Certainly, it should be that they have to get that it needed, it's necessary. They would say, "Well, the fact that we just have the money, you get up and move." So, I would like to urge you. Let's leave it like it is. Let's don't reconsider. Of course, another way if we reconsider, we've been worrying about the programs, the programs -- it's a lot of time passed that I don't like, but I'm willing to go ahead and let it sink or swim on its own. Don't go back and rehash the same thing. If this goes, I predict we'll have at least fifty attempts to change other things. I urge you to go ahead and make the right that we haven't gotten to in this convention and forget about going back. Thank you.

70-45.1

Mr. Poynter Tobias' amendment. The text of it remains the same. The instructions now have to change basically, as follows:

On page 2, strike out lines 3 through 39, both inclusive, including all floor amendments thereto, and also Floor Amendment No. 1 proposed by Mr. Perez and adopted by the convention on August 39 which added language between lines 29 and 30 and insert in line thereof the following:

"Section 4. Right to Property

Section 4. Except as otherwise provided by this constitution, private property shall not be taken or damaged except for a necessary public purpose and unless just and adequate compensation is paid. The right to trial by jury to determine such compensation shall not be denied."

Explanation

Mr. Tobias: Mr. Chairman, fellow delegates, someone has, I've heard said that they reached a compromise up here. Well, let me suggest to you that they have not reached a compromise. The issue that I am trying to put before this convention is, "Which do you want?"

[illegible]

test, use and dispose of private property." It covers it, it says it. That's the concept, "private property." You can do all this. It recognizes that concept.

The phrase "necessary public purpose" I, personally, do not agree with the word "necessary" in there. But I proposed it in here to try to get votes so we could all at least come forth and vote on this one thing. So now should this be changed if you want to change it. You would change that language to read "except when necessary for a public purpose." That would take care of it.

The phrase, "unless just and adequate compensation," that takes care of the quick-taking statute in the previous constitution, or our present constitution.

"The right to trial by jury to determine such compensations shall not be denied." I personally disagree with that too, because we have appellate review of facts in this state. Very true, and it wouldn't mean that much. But let me suggest to you that if we have a right to trial by jury, the owner has a right to such compensation. Well, let me suggest to you this. What about the leasehold right? Presently, the leasehold right is compensated for taking. Presently it's compensated. So therefore, there is a big opening in this section. You are in effect denying that leaseholder of his right to compensation. But what we want to say is, Well, if the legislature just says the right to trial by jury shall not be denied, to determine such compensation shall not be denied."

That means that each person who has an interest in the property, no matter what his interest, can continue.

Now, objection has been urged that perhaps the language, "necessary public purpose," does not allow the courts to judicially determine that.

they would say that the legislature can only consider such matters I beg your pardon, the courts can only consider such matters that the legislature has not passed on. In other words an act that says "pipelines are a necessary public purpose" or just "a public purpose," when they say that, the courts don't generally look into it. But presently, that jurisprudence just says "public purpose." This adds the word "necessary." So you

I know the person who proposed to add that language disagrees, but let me suggest to you that this would be reviewable. The language "just and adequate compensation," fair compensation, so no person will be able to just stand in the way and hold up the whole system. I, personally, like the idea of aesthetic, preventing certain improvements for aesthetic purposes . . . aesthetic and historical purposes. I, personally, like that concept. But

our constitution on begins in the Preamble, "We the people . . .," we the people, all of us for the good of the whole, not for one single individual who wants to stop everything in its tracks. That's pure and utter anarchy; that's not what this state needs. Reasonableness. There is nothing to prohibit the state, the legislature from saying in the statutes that the highway department or whatever shall consider whether there is a loss of aesthetic

purposes... aesthetic and historical purposes. You can't take it unless you consider that. Simplicity is what we need. A Bill of Rights should be simple so each person can understand it. Read Section 1, Section 2 as it's presently in the 1952 Constitution. It's very complicated. When people pick up this constitution to read it to vote on it, they are going to look at the Bill of Rights, first. And then they're going to get down to Section 4, and what is Section 4 going to read? As it's presently drafted, it's going to read like

are two amendments proposed.... one that would take
"except when necessary for a public purpose." Simplicity,
that's what a Bill of Rights is all about.

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when you want to start basic rights.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen of this convention. I recognize that Section 4 entitled "Right to Property," is a very difficult and very complex subject and therefore, it's no wonder that we have reconsidered this question time and time again during the time we have been in session. But I believe that I can safely say that there will be an amendment that is being prepared at the moment that will address itself to all of the concerns that have been raised in this deliberative body. I believe that we are going to make history because we will have an amendment that's acceptable to the committee, that's also acceptable to all of the individuals that have raised questions about this important section.

Therefore, I am asking that you would defeat the Tobias' amendment and would allow the committee and the individuals so concerned about this particular subject to offer an amendment that will do what I think will be in the interest of protecting the individual rights of citizens of this state. The amendment will meet one of the tests so described and enunciated by Mr. Tobias, that is that the section ought to be in language that can be understandable. I think this amendment will do that. The amendment also will, I believe, represent the best thinking possible of all of the individuals concerned with this subject.

So, therefore, I would ask that you would defeat the Tobias' amendment and consider an amendment that is being offered as a jointly sponsored amendment by the committee, cleaning up the language and erasing by way of the new language, some of the objections as now raised by members of this deliberative body. I would ask that you would defeat ... I would ask that you would defeat the Tobias' amendment and would consider carefully the amendment that will be offered shortly by the committee and by other members of this body.

Mr. Chairman, if I'm in order, I would like to move the previous question.

[Motion is the Previous Question with-
drawn.]

Further Discussion

Mr. Arnette ... In many things in this constitution, we realize that a lot of things we are putting in here are not constitutional language.

The "Right to property" as Mr. Tobias had put it is very well stated. It gives everyone their rights to property. It says it's not going to be taken unless it's a "necessary public purpose." It says that "just and adequate compensation is going to be paid," and we ever guarantee a jury trial to decide the compensation. This is practically everything that is in the amendment or the section that we just reconsidered except it's much, much better stated. If you want to amend this, if you are not happy with Mr. Tobias' language, fine, but it's a much, much better starting place than what we just reconsidered. The language in what we reconsidered is verbose, much of it is unnecessary, much of it is repetitive, it is just bad constitutional language. A constitution is supposed to be brief and understandable and to the point. And I think this is what Mr. Tobias' language does. I think it's brief, we can understand it. It's very clear. And it's essentially the same thing we've got in our present constitution with a few additional safeguards that people insisted on having. I don't think it leaves out any safeguard that someone wanted to have. And I think this is the type of amendment we need to adopt to clear up this particular section.

Thank you.
I'll yield to any questions, if there are some.

[Previous Question ordered.]

Closing

Mr. Tobias Mr. Chairman, fellow delegates, I would suggest that you read the first three words of the Preamble, "We the people" Well, let me suggest to you this that Section 4 whether it's this amendment that the so-called compromise is coming with, is included, if it's this lengthy, you won't be able to say, "We the people" You will be able to say, "We the lawyers" It's a lawyer's relief section, that's all it is because every person in this state is going to have to go to a lawyer to find out what it means, and it's going to really mess up the whole works, believe me. You are going to need twice as many lawyers in this state if this amendment ... if my amendment doesn't pass. You are really going to gum up the works.

I urge you, it's an orderly point to start from, start here. They've got the amendments to change it if you want it take out the words, "necessary public purpose," to make it "necessary for a public purpose." Please, I urge you, let's clean up this language; clean it up. And nobody would ever know what that means.
I urge its adoption.

[Amendment rejected: 41-71. Motion to reconsider tabled.]

Point of Information

Mr. Tate Mr. Speaker, I don't know the parliamentary name of this motion, but I wonder how many would join in cosponsoring a simple amendment that says, "Private property shall not be taken except for a public purpose and unless adequate compensation is paid."

Mr. Henry Justice Tate, take your seat, please.

Bless you my brother. Go and sin no more.
The distribution copies are here. Pass them out and we'll stand at ease for five minutes while everyone reads the ... and I'm sure that everyone will stay in their seat and read their copies.
Five minute recess.

Recess

[Luncheon Call: 100 delegates present
and a juror.]

Amendment

Mr. Poynter Amendments sent up by Delegates Lanier, Jenkins, Heine, Chatelain, Burson and Alphonse Jackson.

Amendment No. 1, on page 2 delete lines 13 through 29, both inclusive in all floor amendments thereto, in their entirety.

And I think for ... to make it technically clear, Mr. Lanier, we ought to specifically delete the proposed amendment which was adopted by Delegate Perez. And I presume that wouldn't be controversy between lines twenty-nine and thirty, and I presume that's not controversial, Mr. Perez, because that language is included in this draft anyway.

Mr. Lanier It's my understanding, Mr. Clerk, and I think Mr. Perez will agree, that this language is included in this proposal and, therefore, that that addition would be in order. But I'd like a statement on the record from Mr. Perez to that effect....

Mr. Poynter "Section 4. Right to Property." I'll add that to it, Mr. Lanier.

"Section 4. Every person has the right to acquire, control, own, use, enjoy, protect and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power. Property shall not be taken or damaged by the state or its political subdivisions, except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate property except for a public and necessary purpose and with just compensation

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been considered *dammum absque injuria*, such as cost of removal and things like that, and I'm glad you brought that point up.

Mr. Pugh I made my point. I don't think the word "owner" is as onerous as what you purport for it to be. It hasn't been previously so defined.

Mr. Lanier For example, we had a problem at one time as to whether a servitude was a property right, and I think it's pretty clear under the law that it is, and you can't expropriate a servitude, but you are also entitled to compensation for expropriating a servitude.

Mr. Pugh Now you say it's a judicial question. Are you suggesting that there will be a suspensive appeal?

Mr. Lanier We don't make any point on that. I think that would have to be up to the legislature to make that determination.

Mr. Pugh Not when you put in here it's a judicial question, it's not up to the legislature. If you make it a judicial question, then, brother, you've opened up all rights insofar as a suspensive appeal is concerned.

Mr. Lanier I don't think that's necessarily correct because the appeal and the manner of taking the appeal is a procedural thing. The issue of determining whether or not there is a necessary purpose or a public purpose or questions of fact in law which would be determined by the courts; the manner in which an appeal is taken I do not believe would be covered by this particular language, Mr. Pugh, that's my opinion.

Mr. Pugh Well, when you say judicial question, of course we just disagree, that's all.
Now, define personal effects, will you?

Mr. Lanier Well, I can't give you an all inclusive definition, just like I couldn't give you an all inclusive definition of the term "negligence." These would be, I would assume, primarily movable type personal effects on a person's clothing, that type of a thing.

Mr. Stagg Mr. Lanier, it would be a part of the legislative history of this constitutional article we are on that the questions were given to the drafter of the provision and to what was his intention for it to mean?

In that connection, then, may I ask again this question? If a man was a tenant in a building that was used for laundry, and if in this laundry he had steam boilers and waterlines and presses and all of the thousands of dollars that it takes to turn a building into a laundry, and the state expropriated the building for the building of a road, is it your opinion that under the language you have drafted, the man who had made those extensive leaseholder improvements would have to be paid compensation if the building was taken and destroyed and his laundry had to go?

Mr. Lanier I believe that depends, of course, the point is as you well know, can contract as to the measure of damages in expropriations, but if that's his property, if he has a leasehold interest, a value can be placed on a leasehold interest, and it is a real right, and it is my intent and, I believe, the intent of my coauthors that this real right would have a value that can be recoverable in an expropriation.

Mr. Stagg If it took him two hundred thousand dollars to reinstitute that laundry, in other words, move it out of one building and into another, then he could get compensation to the extent of his loss as your article says "full compensation will be paid."

Mr. Lanier Yes.

Vice Chairman Casey in the Chair

Mr. Winchester Mr. Lanier, it is my understanding that the wording "municipalities may expropriate utilities" that that refers to private utilities and not public utilities.

Mr. Lanier That is correct. It is my understanding of the existing law that one public agency cannot expropriate another public agency. That type of a thing would have to be worked out through an intergovernmental cooperation or by a joint resolution or something like that.

Mr. Willis I have three questions. They are Walter Lanier questions for the record.

Now you are focusing on the words "judicial question." Would this allow the fifteen day cut-off time under Revised Statutes Title 19, Section 7 regarding all defenses except compensation?

Mr. Lanier It is my understanding of this language that it does not control the procedure

Mr. Willis The answer, I assume you say, is yes.

Mr. Lanier Right.

Mr. Willis I don't like that.

Now, will it also cut off provisions of the same revised statute title where the case is filed and fixed and served on the defendant and the trial is held twenty days after he is served. Will that cut that out?

Mr. Lanier No.

Mr. Willis Now, the next question which is corollary to that of Mr. Stagg's only this is a country boy instead of the owner Instead of the leaseholder being a leaseholder, he is a tenant and the crops are damaged by a pipeline or one of these high power lines, what happens to the tenant with an unrecorded lease? Does that affect him?

Mr. Lanier An unrecorded lease on is it a written lease?

Mr. Willis If it's unrecorded it's

Mr. Lanier No, no. No, no. I think you will agree, Mr. Willis, if it is a written lease affecting real property, it is binding on the parties even though it is not recorded. It is just not binding on third persons under....

Mr. Willis I realize....

Mr. Lanier Now if it's verbal, I don't even think it's binding between the parties. If it is a verbal....

Mr. Willis Well, it's a prior lease from year to year, and here's the farmer about to harvest his crop and here's the pipeline coming through it, and they destroy his crop, they pay the owner, but they don't pay the tenant.

Mr. Lanier I believe he would be covered under that situation as I intend to interpret the words, "owner of a real right."

Now the question to me would be....

Mr. Willis You mean to say that their crops are a real right of the tenant when it's affixed to the land belonging to the owner?

Mr. Lanier I've got to think about that one, Burt.

Mr. Willis Think some more, and you'd better make a good record.

Mr. Roy I don't know what all the exchange was that Mr. Willis raised. But isn't it a fact that right now, if you don't we're not certainly taking away any right that people presently have are we?

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Mr. Lanier No, definitely not.

Mr. Lanier That's our contemplation.

Mr. Roy And right now if the tenant can collect for the damage done to his crop, which I think he can under any part of the constitution because he is damaged, then we certainly are giving him that same right. Isn't that right?

Mr. Tate The real question I had, Mr. Roy, is I believe there is some codal provisions that say, and I believe there is some jurisprudence also that says that a verbal contract dealing with a movable is not binding between the parties. So, then, that would mean if it's not binding between the parties, I don't think he would have an interest that ... for which he could recover. I know there's been cases, for example, dealing with mineral royalties, where people have had verbal agreements on mineral royalties and the court has held that since it wasn't in writing, whoever the title was in, it was theirs and I didn't make any difference what kind of verbal agreement was between the parties.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, with regard to this amendment, I rise to oppose it, but not to oppose it as strongly as I do the present language we're replacing. This is, I believe, a great deal better; we can live with it. If it was legislation, I'd like it; I'd like to see if it worked. My chief objection to it is that it is too much detail in the constitution, and I'll point out one or two instances. I don't plan to take too much of your time on this and that we may find it unworkable. Incidentally, I can live with it, but I don't know if the utilities of the state can live with it, and maybe we shouldn't consider their interests. For instance, for private people you must not only prove it's public, but also necessary. Now, and you may in your good judgment determine that they should have a stronger burden, and perhaps they should, than public agencies. But that means, for instance, farm by farm, farm by farm in each separate place along the route it's a judicial question whether it's necessary to go here, here, here. That means, in my judgment, perhaps that they would not be able to commence construction until it finished expropriation of a whole series, section of the line. I'm calling that to your attention. It may be something you don't think is important, but I think it is something you should consider. Second, the right of trial by jury for compensation. I think it might be a laudable thing to try once again. We seem to forget that we had trial by jury for damages in expropriation cases up until 1948. Here in this busy, crowded twentieth century, in '48 it was abolished. It was abolished because it was putting too great a burden on the public improvements that were necessary to accommodate an expanding society. For instance, on a highway, on a highway that would mean, could very well mean just for example, one hundred or one hundred and fifty jury trials on the length of the highway through the parish. You may or may not think that's a cost that's worthwhile, but it will unquestionably delay the accomplishment of the eventual conclusion of the cost of the highway and how to build it and where to build it. It will not be a question in highways, but it will be, of course, in the public utilities. So in short, I think it's an amendment that has a lot of merit to it if it were legislation. I think I'd be for it a million percent; I'd like to try it and see if it worked. I just worry about us putting it in the constitution. I therefore, I will give you a chance, in a minute, to vote on something else without much more, if you should happen to turn this down, which will simply say, "Private property shall not be taken for public use without just compensation and unless just and adequate compensation will be paid," and that which will allow the legislature

proposal.

Mr. Tate Judge Tate, as a member of the Supreme Court and realizing that this is the Bill of Rights do you feel that your amendment gives the kind of basic rights that this longer legislative kind of amendment does? Does it give the basic rights?

Mr. Tate In my opinion, it does just as does guaranteeing the federal Bill of Rights.

Mr. Casey Yield to a question from Mr. O'Neill?

Mr. Tate Oh, and Mr. O'Neill, I want to make a public apology. When I said I was here when Section 4 was debated, I was here in the pre-Henry huddles on it, but it was Section 3 that I was here on. I'm sorry if I misstated it.

Mr. O'Neill That's all right, Judge Tate, I appreciate that. I just wanted to ask you, this is the language from the 1921 Constitution?

Mr. Tate No, I changed it to add "unless just and adequate compensation was paid," to make sure that we have no intention to forbid the legislature from adopting the quick-taking expropriation procedures they use in building highways alone.

Mr. O'Neill Well, Judge Tate, don't you really think that the provision as it's been, the amendment that we are debating right now, don't you think that offers the individual more rights than the way that you have the amendment coming back out?

Mr. Tate Mr. O'Neill, I really ... yes, and it has that merit. What I fear is that some of the rights that we are specifying because of this point in time we think are great, two years from now we might not. We are tying the hands of the legislature.

Ending

Mr. Jenkins Just so there will be no doubt, I want everyone to know that the committee is completely behind this. No one is totally satisfied with it, but it tries to take into account the views of all of us. Everyone has agreed it's something that everybody involved can live with. So, on that basis, I urge your adoption of it.

Questions

Mr. Willis I couldn't ask Justice ... question about what troubles him with respect to "necessity," but isn't it a fact that these pipelines and guidelines should, if they are so much in a hurry as this [...] statute gives them the right, shouldn't they plan in advance and give the people proper notice and hearing?

Mr. Jenkins Absolutely.

Mr. Willis Isn't it a fact that the only hearing you get is in Washington D.C. for pipelines, and the only notice you get is buried in the federal Register, which nobody reads. So, you don't know what's coming down the pipeline at any of these time bombs, do you?

Mr. Jenkins That's correct.

Mr. Willis I ... question about what troubles him with respect to "necessity," but isn't it a fact that these pipelines and guidelines should, if they are so much in a hurry as this [...] statute gives them the right, shouldn't they plan in advance and give the people proper notice and hearing?

Mr. Jenkins No, sir.

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Mr. Pugh That's not the jurisprudence?

Mr. Jenkins No, sir.

[Amendment adopted: 82-26. Motion to reconsider tabled. Motion for the previous question or the entire subject matter rejected: 18-85.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Tate]. (These are being distributed now.) On page 2, delete lines 13 through 29, both inclusive and all floor amendments thereto in their entirety, and insert in lieu thereof the following:

"Section 4. Right to Property

Section 4. Private property shall not be taken or damaged except for a public purpose and unless just and adequate compensation is paid."

Amendment No. 2 deletes the Perez amendment between lines 29 and 30, which was adopted back on August 30, 1973.

I think your language would adequately delete the previous amendment -- the one just adopted.

Explanation

Mr. Tate Mr. Chairman, without further preliminary, we have had the debate, I just submit this to your good judgment.

[Previous question ordered. Amendment rejected: 38-61. Motion to reconsider tabled.]

Amendment

Mr. Poynter The next amendment is sent up by Delegate Guarisco.

Amendment No. 1. On page 2, line 13, in Floor Amendment No. 1 proposed by Delegates Lanier, et al and adopted by the Convention on today on line 23, immediately after the word and punctuation "taken," delete the remainder of the line and delete lines 24 and 25 in their entirety.

Explanation

Mr. Guarisco What I simply want to do with my amendment, and I voted for the Lanier amendment, and I think it's a reasonable compromise except that I think we might be redundant in this section, now. I think we are now providing for adequate compensation for each and every landowner in this state, but we have forgotten the person who owns riparian land that's subject to a levee servitude. I simply want to make this amendment to delete the exception, the last sentence: "The provisions of this section shall not apply to appropriation of property for levee and levee drainage purposes." I see no reason why we should accept this particular item. If we do so, then we are denying compensation, and I don't think anybody in this convention wants to deny compensation to anyone for land that's...for property that's taken. Now, I think you might have some fears as to whether or not you can take a levee. That's not a problem. Appropriation, under the law right now, is under the police power of the state. Now, that is taken care of in the second sentence of Section 4. "This right is subject to the reasonable statutory restrictions and the reasonable exercise of the police power." So, we have retained the right to take and appropriate for levee purposes, but if we take this exceptionality in, then this will allow reasonable compensation and fair market value to persons who lose their property for levee purposes. It just puts them in line with everybody else. I don't want to do away with the taking for levee purposes, but I do think that everybody who owns property should be treated alike. I'll yield to any questions.

Question

Mr. Lanier Mr. Guarisco, is it not true that the

exercise of the riparian servitude is the exercise of a servitude and is not an exercise of the police power?

Mr. Guarisco I have the 1921 Constitution as interpreted by the courts, and it's case, after case, after case state, under the police power, may appropriate property and may deny recovery for property damage in constructing public levees. It is under the police power, over, and over, and over. This is nothing new, but I think it's archaic to not pay people compensation for levee purposes when you pay them for everything else. If we don't treat it here, where are we going to treat it? We're going to treat it somewhere else? I'm not opposed to appropriation for levee purposes, and if it's another section, that's fine, but I think we ought to treat payment and compensation and so forth right here.

Further Discussion

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, if you will remember, this matter was thoroughly discussed and thoroughly argued, and the amendment was adopted to put the appropriation for levee purposes in a different category with the complete and distinct understanding that when we came to the Local Government Article, which deals with the payment for taking for levee purposes, that we would discuss compensation at that time. There is no reason that we should belabor the point now. This is a compromise provision by the great majority of the members of the Bill of Rights Committee together with most of the other delegates, and we should reject this amendment.

[Amendment withdrawn.]

Mr. Casey Now, Mr. Tobias has asked for recognition to speak on the section.

Point of Information

Mr. O'Neill Mr. Chairman, we haven't followed this procedure before in speaking on the whole section, have we? We've only spoken on amendments. Am I correct?

Mr. Casey I think what's "good for the goose is good for the gander," and if the procedure is good for amendments, it's good for the whole section. Please proceed, Mr. Tobias.

Further Discussion

Mr. Tobias Mr. Acting Chairman, fellow delegates, again I am before you. I called Section 4 before. We've now amended it once before, "verbal garbage." It still is "verbal garbage," and yet we will need an attorney to interpret it. If you really believe this is what the people want, vote for it.

Mr. Chairman, I once before called this section "verbal garbage." It still is "verbal garbage." It needs 67 votes to pass; I urge that you not give it the 67 votes. Defeat it, let it be cleaned up. It's still horrible--it's an abomination. Unfortunately, with deep regret, I will have to oppose the whole article on Bill of Rights, although there is a lot there that I disagree with.

Further Discussion

Mr. Staggs Please let me have your attention because we have to decide what to do about a sticky problem. All of you will remember that there was a list of fifty-three amendments before the people for decision, and there was a campaign to turn down all the amendments, they all were defeated. Included in those that were defeated was an amendment that would provide that the legislature could pay for relocation expenses in order not to lose all federal highway funds. So, the next constitutional amendment season we were all implored to vote for Amendment No. 1 so that we would not lose all federal funds heretofore coming to this state for highway and other purposes. Amendment No. 1 reads this way.

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Mr. Chatelain Well, the word "access" and "physical condition" was the one that frightened me quite a bit.

Mr. Gravel Well, if you'll notice, the freedom from discrimination that we seek by this amendment with respect to physical conditions would be any "unreasonable, capricious, or arbitrary discrimination."

Mr. Chatelain Thank you.

Mr. Roemer Mr. Gravel, let's make this point again. The amendment to which you address your remarks presently is the one that has nothing to do with the hiring, the firing, the promotion, is that correct?

Mr. Gravel That's correct.

Mr. Roemer Only public areas in access to them.

Mr. Gravel Yes, sir.

Mr. Berry Mr. Gravel, isn't it true that what we have done here is consistent with the 1964 Civil Rights Act that's already in existence?

Mr. Gravel But I think that the concept definitely stems from the Civil Rights Act, yes, Mr. Berry.

[*Discusses language in original. Replaces "physical condition" with "access to public places, accommodations and facilities."*]
[*Replaces "physical condition" with "access to public places, accommodations and facilities."*]

Point of Information

Mr. Jenkins Mr. Chairman, delegates, we have an amendment that has been passed out. The author is A. Jackson on behalf of the Committee on Bill of Rights and Elections and it deals with freedom from discrimination. It's a little bit different from Mr. Gravel's amendment, but the last sentence of that proposal says "nothing herein shall be construed to impair freedom of association." I'd like to offer that last sentence on to the proposal just adopted. If I could have a suspension of the rules for that purpose.

Mr. Henry Mr. Clerk, can you doctor that thing up and make a real nice amendment for these gentlemen?

Mr. Poynter Yes, sir.

Mr. Henry Well, would you read it the way it ought to read, please, sir?

Amendment

Mr. Poynter O.K.

Amendment No. 1. On page 7, line 16 add the following at the end of the language added by Floor Amendment No. 1 proposed by Mr. Gravel, et al., and adopted by the convention on today. Just simply--"Nothing herein shall be construed to impair freedom of association."

Explanation

Mr. Jenkins Mr. Chairman, delegates, because we are talking about public accommodations, facilities and things of this nature, it could be construed that certain private organizations and places could be considered, by some stretch of the imagination and some judicial opinion, as public and certainly we don't intend for this, I don't think, to apply to any private group or association or private meeting place and I think that this language would protect us some in that regard. So I would like to move the adoption of this amendment.

Questions

Mrs. Zervigon Mr. Jenkins, as I understand it, what you are really talking about is the freedom not to associate.

Mr. Roemer Well, obviously that is, when you talk about freedom of association you are talking about

that just a when you are talking about freedom of speech, you are talking about the freedom to speak or not to speak as well as what you say.

Mrs. Zervigon No, sir, I believe this is a different thing because I believe the words that you are now laying before the convention for their consideration would mean to me that I could knock on the door of a private club and say, "Let me in; I want to associate with those people."

Mr. Jenkins No. It's ... freedom of association is not just the right to associate with a given person it's his right not to associate with him. If someone forces you to associate with him, then it's abridging your freedom of association.

Mrs. Zervigon Where is that defined, that the freedom of association really means the freedom not to associate?

Mr. Jenkins Well, I think you just have to understand the meaning of words. I think that's a clear meaning of that expression. Let me also state that that sentence was in the original committee proposal, and so we are just attempting to carry it over into this section.

Mrs. Zervigon Thank you.

Mr. Stovall Mr. Jenkins, you are an attorney, aren't you?

Mr. Jenkins No, I'm not. I have a law degree, but I am not an attorney.

Mr. Stovall Not an attorney. I'd like to ask you where in Mr. Gravel's proposal is there the possibility that it might be implied that you would be compelled to associate with anyone whom you might not choose to associate with?

Mr. Jenkins Well, the nature of the proposal as adopted is rather vague when you talk about what is discrimination, what is a public place, what is a public accommodation, what is unreasonable discrimination? These are all questions that I don't think any of us know right now and the courts are going to have to decide. I simply want to make sure that the courts don't go too far and interpret that certain truly private places are in fact public.

Mr. Roemer It is not unusual, Mr. Jenkins, that I am confused. I want you to know, or do you know that I am confused? You know that?

Mr. Jenkins I'm not surprised.

Mr. Roemer O.K. me either. Now, what confuses me is that you have tacked the line onto the amendment that we just passed, correct?

Mr. Jenkins I'm trying to.

Mr. Roemer O.K. The amendment that we just passed says, "In access to public areas, accommodations and facilities." Now, what does your amendment do to that?

Mr. Jenkins Well, the question arises as to what a public accommodation is. For example, is a barroom a public accommodation? Possibly it is, possible it isn't. What if it is a private barroom, a private club; is that a public area? It...you come into some real touchy questions as for instance, whether...do you need a membership card or don't you for it to be a private club...

Mr. Roemer So be it.

Mr. Jenkins ...or is a country club a private place? Obviously, there are some private places and we want to be able to at least allow the court to make that distinction.

Mr. Roemer I understand your problem, Mr. Jenkins,

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... problem? Does it define what a public place is, your amendment?

Mr. Gravel: No, it doesn't.

Mr. Stinson: Thank you.

Mr. Gravel: ... I am ... frustrated myself. Do we have to have it in the constitution that I have to have freedom of association?

Mr. Jenkins: No.

Mr. Gravel: ... have to have constitutional ...

Mr. Jenkins: No. We don't have to have this section in the constitution, Delegate Fulco.

Mr. Fulco: I know, but ...

Mr. Jenkins: But if we are going to have this section, I certainly think that we need this sentence in it to give us some protection with regard to this section.

Mr. Gravel: ... that ... if that ... US ...

Mr. Jenkins: If you talk about access to public accommodations not being denied anyone, you have a problem with regard to private associations and private places and whether or not people who own those private places or have those private associations can continue to associate freely or whether they are going to be forced to associate with people they don't want to.

Mr. Fulco: Well, Woody, am I going to be arrested for associating with some other person in these public places if I am not guaranteed that right in the constitution?

Mr. Jenkins: No, but you might be denied, for instance, if you are a group, the right to continue and maintain the integrity of your group and we want to make sure that that's not continued. This is not a new thing that is just being brought forward right now; it's from the original committee proposal, Section 7, been in there from the very beginning.

Further Discussion

Mr. Denberry: ... forced to speak against this particular amendment being placed in this particular place. The reason I raised the question originally as to whether or not it was germane to the subject matter and the question I wanted to ask Mr. Jenkins: as I understand it now, a private organization can rent a public location and once the public area has been rented by this private association it could then exclude these public areas, accommodations and facilities based on discrimination, on race, religion, national ancestry and so forth. Now, I don't believe that is what Mr. Gravel and Mr. Berry had in mind when they offered the original Section 26, but I believe that by some leisure manner, by putting this last sentence on as the tag into this, you might be destroying the very provision that was adopted by this convention. For that reason I ask you to vote against the amendment in this location. I would have no objection and I would support the amendment if it simply removes all the teeth from the sentence.

Further Discussion

Mr. Gravel: I want to just extend a little bit the ... to this particular amendment. For all practical purposes, the intent of the amendment that was ...

... have ... that I would support a spelled out freedom of association provision in some other part of the Bill of Rights before we conclude it. But, if you are going to put this delineating type language on this particular specific provision that, very frankly, I thought represented a reasonably good compromise among the divergent views that had been expressed heretofore, if you are going to adopt this amendment, however, then we might just as well recognize the fact that we are going to have to start all over and begin again and not conclude that we have reached a middle ground that most of the delegates could agree upon. I strongly urge that you don't continue to leave this section open for a great deal more discussion, debate amendments and so forth, but rather that we close it out on the basis of the amendment that you previously adopted, that we defeat the Jenkins' amendment, and then if he wants to propose that as in a separate section before we conclude the Bill of Rights, I can assure him that any reasonable proposal along that line, I would support it with him. I urge you adopt --- urge you reject the Jenkins' amendment.

Questions

Mr. Stinson: Mr. Gravel, I didn't think that Mr. Jenkins' amendment was very important, but from what you say, if it ruins what you have already done to the people, would you please answer two questions? First, what have you already done to the people and how would this ruin what you have already done to us?

Mr. Gravel: I haven't done anything to the people. We have adopted by a rather bland but substantial vote a provision that says that "in access to public areas and accommodations, there shall be no discrimination." Now, I don't think that there should be built into that concept a freedom from association belief that may militate against the thrust of the amendment. Nobody, you don't know nor does Mr. Jenkins know exactly how the courts are going to construe that particular... this particular provision with that amendment attached to it and I think that if... we run the danger of having a confusing provision...

Mr. Stinson: ... Mr. Gravel...

Mr. Gravel: ... had a clear one.

Mr. Stinson: ... now you... I'm sure belong to the Knights of Columbus and you have a tax-exempt building and so forth.

Mr. Gravel: Have a tax-exempt what?

Mr. Stinson: ... building that you meet in and I go up there and knock on the door and say, "Listen, I belong to the Methodist Men's Club and you are in a tax-exemption building here and I want to come in and join and meet with the knights of Columbus" --- you wouldn't let me in though... don't you think you should be able to keep any Methodist out? That's what this does.

Mr. Gravel: Well, I don't agree with you, that ... meeting place that you refer to is a public accommodation or a public facility. I don't think we are talking about the same thing and therefore precisely the problem. I think that...

... that the United States Supreme Court only ...

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Topic: *perjury* *Amendment*
Journal: *Warren* *Warren* *Warren*

Amendment

Mr. Poynter: Amendments sent up by Delegates Warren and Jack.

Amendment No. 1. On page 7, between lines 3 and 4, insert the following:

"Section 22.1. Right to Compensation

Section 22.1. The legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed, provided the person did not by perjury contribute to his own conviction."

Explanation

Mrs. Warren: I think that this amendment is almost self-explanatory. Not some of the delegates want to add a method following the word "provides." I don't think it is really necessary, but I don't object. The important thing is that no innocent person should be imprisoned and not receive compensation for time spent in prison. Often people go to prison in the prime of their life and come out old and tired and not able to make a living for themselves and their family. What about the suffering of their families while they are imprisoned? They have no relief and they run from one lawyer to another trying to prove the innocence of the person. You can't know how a tight shoe feels unless you have to wear one; then you know how the pain feels. Death is a sad vehicle. Death is an everyday occurrence, but it has a terrible sting, yet in most cases one never gives much thought until it reaches into their immediate family and snatches one close and dear to us. Let us, as hard as it might seem, try to imagine we are the victims of the circumstances. How did you feel when you were accused of something that you did not do? How would you want to be treated under the same circumstances? I want you to ask yourself that question. How would you feel and how did you feel when you were small if your parents accused you of something that you know you didn't do? How would you want them to just say nothing about it and do nothing about it? Mr. Fontenot raised the question when I was up here once before and he said the person who has somebody lying dead in the street does not get any compensation. I wanted to answer Mr. Fontenot's question, but the point is this: The person lying in the street, the state did not kill them, for the state owes them nothing, and in the next thing persons who are killed,-- your family people are killed and laying in the street;--a person that serves time does not give anything to you; it only punishes that person for the wrongdoing that it has done. I say to you that try to look in your heart and think about this person who has innocently gone to jail and served time in prisons for something that they did not do and see if you don't want to do something about it. I mentioned to a person here concerning if a teacher has been taken off of her job, accused of something that she didn't do or he did not do, and then they are found that those teachers are innocent, they get paid retroactive. What is wrong with an innocent person being paid some compensation for the time that they have spent? Thank you very much.

Questions

Mr. Fontenot: Mrs. Warren, again I am going to ask you. Don't you think this could probably be taken care of in the legislature without a constitutional section?

Mrs. Warren: I don't think so, Mr. Fontenot; if I did, I wouldn't still be coming back up here taking the convention's time.

Mr. Fontenot: Secondly, do you have statistics to show how many persons have been imprisoned, convicted and imprisoned for crimes when they were proven subsequently not to have committed any crimes?

Mrs. Warren: No, Mr. Fontenot. I don't have

Mr. Fontenot: You don't have any statistics at all.

Mrs. Warren: ... I gave you a picture of one and I don't have any statistics, but I am sure you could find them. But if it's just one person, I think they deserve some compensation.

Mr. Fontenot: You think ... I mean this one person ought to have this constitutional right, but all these other persons don't need constitutional rights?

Mrs. Warren: Under these circumstances, I do.

Mr. Stinson: Mrs. Warren, I am concerned about the last part that says "provided the person did not by perjury contribute to his own conviction." Now, what is meant by that?

Mrs. Warren: I think if they have contributed to their own, they just told a lie and they are guilty.

Mr. Stinson: In other ...

Mrs. Warren: I mean they could come back. I really don't want to go into hang-up there. This was added; I've tried to get it down to the point where it would be acceptable to most of the people of the convention.

Mr. Stinson: Well, does that mean then that if a person pleads guilty, and later... had found out that he really wasn't guilty, he wouldn't recover if he had lied and said he was guilty? Is that right?

Mrs. Warren: I don't think so. I'll yield to Mr. Jack though.

Mr. Stinson: Well, you think Mr. Jack would tell the truth or that?

Mrs. Warren: I believe he would.

Further Discussion

Mr. Jack: Mr. Chairman, and ladies and gentlemen, I am co-author of this amendment. Mr. Warren has had this up several times, asked people for help, has a good idea. I've helped here to draft this and a number of others. Now, you are going to get an amendment that should have been passed out, will be passed out by Senator Rayburn, which is going along with this. Now, the way... this will simply add the words "a method" at the end of the first paragraph. Now, here's the way it will read, if you will look at the Warren--it's labeled Warren and Jack Floor Amendment with the words "a method" here's the way it will read: "The legislature shall provide a method for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction." The way adding this section originally was I wouldn't have supported it, but I am glad to support right in a wrong by adequate compensation where an innocent person was convicted, went to prison and he did not aid and aid in his conviction by committing perjury. This is done in lots of states, but the legislature shall provide the method for making this. Now, as to how you go about proving his innocence, many times it proves itself; the legislature will set it up. Many times a person has served time in prison, allegedly having killed another person, and the person has been proven to be alive by coming forward. Many other persons confessed, but the legislature will be the ones to decide what type of proof is necessary to show that the person was innocent who was convicted and sentenced. Now, I would not support such legislation unless it had that provision that the person that was convicted was innocent, he must not have committed perjury. Now, where you have these people at times that are charged with a crime--

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methods of payment, I think we just argued half of the day about that on Mr. Jenkins' Property Right Section where we provided constitutionally that a person must receive just compensation. I believe very strongly we have affirmed the fact that we are going to provide just compensation for property, then it seems to me that we ought to follow suit and provide just compensation for the liberties of a person, particularly when the state has unjustly endowed a wrong on an individual. I think Mrs. Warren's amendment as written has much merit. I don't find the kinds of problems of proving innocent. I think, you know, you have got the appeal process, all of that. So ... there are ways that a person can be proven innocent. I think if there's a question of Styling and Drafting, that's why we have got a Styling and Drafting Committee so if, you know, you are concerned about proven innocent, but in effect, we know we can accomplish that ... that end result, then Style and Drafting can provide the necessary wordage. I would suggest to you that the amendment as Mrs. Warren has proposed attempts to meet all the objections, as I understand it, when it was initially proposed. The objections that I have attempted to ... relate to and try to enlighten you holds no real valid weight. It only says that the legislature shall provide for adequate compensation. Mrs. Warren indicated to you that there is a following amendment if this one is adopted to insert the word "method." So, I would ask that you give some favorable consideration recognizing the kinds of not only loss in terms of confinement, but the kinds of loss to that person's reputation, his status in life, the effect on his family, his liberties, his citizenships and things like that, and I think that the state ought to. I ask for your favorable consideration of this amendment.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I rise in favor of this amendment. I don't find great difficulties in resolving the questions that will possibly be posed by this amendment. It clearly states that "the legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed." It only happens rarely, but it does happen. You heard me mention the case of Brady vs. Maryland the other night. That's an instance when it can happen. In the Brady case, the district attorney suppressed evidence that he knew would show that this person was not guilty. The jury in turn found him guilty. At another trial, the person who should have been convicted in the first place was, in fact, convicted, and Brady himself was released from the penitentiary. Who of us should suggest that a man like Brady should not be compensated for the time in which he was in the penitentiary and the damage that was done to him? Who of us should best provide that compensation, than the state that put him there with the suppressed evidence in the first place? I reiterate, I move the adoption of this amendment.

Questions

Mr. Willis I have a number of questions. I wonder how long we'll last. Will the legislature pay the minimum wage if a man is sent ... is imprisoned for say, about two years?

Mr. Pugh You say, will they pay at least the minimum wage? I certainly hope so.

Mr. Willis Can you compel the legislature to appropriate compensation? Can you mandamus the legislature?

Mr. Pugh Can you mandamus the legislature? I think by constitutional act you can mandamus them to do it.

Mr. Willis Don't this a judicial issue, the question of compensation?

Mr. Pugh You say 'Is compensation a judicial issue?'

Mr. Willis Yes.

Mr. Pugh I'd say that the legislature found it not to be so when they provided when a policeman was killed, they paid him ten thousand dollars, and I'm very much for that act, but they had no trouble at that time making a determination of what it was worth.

Mr. Willis Well, that was legislative. Now, is not the victim of a crime, regardless of what crime it is, as damaged as the alleged perpetrator of that crime, later proved not to have committed the crime?

Mr. Pugh No doubt in my mind and I ...

Mr. Willis Why isn't that victim provided for?

Mr. Pugh I have no reason or knowledge why Mrs. Warren did not provide for that one, but I would support such an amendment.

Mr. Willis Now, does not this constitutional provision encourage a conspiracy among inmates whereby one who is for life in the pen, will come out and testify that the other one didn't commit the crime?

Mr. Pugh That same question was asked of Mrs. Warren.

Mr. Willis What's your answer?

Mr. Pugh I don't think it would. It's inconceivable to me that the facts as presented by either that person or you would actually occur, that two people would conspire to collect money in this fashion. It's too easy to collect money than to be doing it in this fashion.

Mr. Willis Well, we have different views on it. Now, a conspiracy ... you know that you can be charged with conspiracy for committing a crime, that is, two people can. Let us assume that one of them commits the crime for which both of them are sent. Now, you have the two in jail. Now, one confesses and says the other one didn't pull the trigger, "I did that." Wouldn't that encourage some of that?

Mr. Pugh No, because in my opinion, under the existing law, and there is a law that was passed by the 1973 legislature, both of them would still be guilty. I don't think it would be any compensation.

Further Discussion

Mr. Berry Mr. Chairman and fellow delegates, I rise in support of this amendment. Our legal system, as good as it is, is not perfect. Sometimes mistakes are made. There have been instances in which a person has been arrested, charged with a crime, prosecuted, and found guilty, and sentenced to a term in prison ranging from a year up to life in prison; and it subsequently turns out that the party is innocent after being taken from society for a number of years. This is a terrible wrong which this amendment would right. Nothing is more horrible than to take from an individual, his liberty when he is in fact innocent. He not only loses his liberty and freedom, but frequently his family and all of his worldly possessions. No money in the world can return to him the years that he ... has been taken out of his life which he has spent in a penal institution. The least thing that society can do is to constitutionally provide that in the event a citizen suffers a miscarriage of justice, that he should be given some type of compensation in order to enable him to make the necessary readjustment in civilian life. I urge that this amendment be passed.

Questions

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Mr. Lanier: Mr. Berry, I'd like to ask you at this point that in Section 1 of this article we put in a provision that says "the rights enumerated in this article are inalienable by the state and shall be preserved inviolate by the state?"

Mr. Berry: Yes.

Mr. Lanier: This is entitled "Right to Compensation." Is that correct?

Mr. Berry: "Right to Compensation." That's right.

Mr. Lanier: But it only applies to an individual who has been convicted and subsequently found not to have done it and also did not commit perjury in the conviction. Is that correct?

Mr. Berry: That's right.

Mr. Lanier: Why haven't we provided something in here for the people who are the victims of crimes, that are injured as a result of crimes?

Mr. Berry: Well, I think there's a logical distinction between this ... in this particular amendment, the persons have gone through due process of law, and the mistake has been made and an innocent person has been found guilty, and it subsequently turns out it was proven he was not guilty and he has spent a number of years in jail. Now, the state had a direct hand in that and incarcerated him for a number of years, while the innocent victim --- the state didn't have anything to do with that, plus the fact you've got your remedy at law as against the perpetrator insofar as the persons that might have been harmed by the criminal act. You can still go against him civilly.

Mr. Lanier: But, I mean, Mr. Berry, if the man is imprisoned for life as a practical matter, what type of redress do you have against the man that's done it?

Mr. Berry: Once he is proven innocent, he could still come back under this implementation of this constitutional mandate that this legislature would set out.

Mr. J. Jackson: Doctor Berry, did you know that we've heard some arguments about this possibly being statutory material, but is it not a fact that just recently that we provided, after several amendments and compromises, constitutional just compensation for property rights of individuals, and here we are talking about human liberties?

Mr. Berry: I would certainly equate a personal right over a property right. If you're going to protect one, you certainly should protect the other.

Further Discussion

Mr. Casey: Mr. Chairman and delegates, I'll be very brief on this. I'd like to clarify one thing initially, that I feel for virtue and motherhood and I'm definitely against sin. I know that this is a motherhood proposal; it is good; I'm for the concept. As a legislator I would certainly favorably consider the proper enactment of sensible, reasonable legislation that it would enforce provisions of this type, put teeth into them, make them effective and award the good compensation that might be considered reasonable under certain circumstances. But, certain things worry me about this particular provision. First of all, I'm concerned about the interpretation of the words "adequate

compensation." I think that's a word that we who may be involved in this first amendment effort that the state would be forced under the interpretation of "adequate compensation" to award a tremendous judgment of what is adequate compensation.

favor for instance the rich over the poor. I don't know right now what the interpretation of "adequate compensation" might be. I merely am saying that this really properly addresses itself to the legislature only. Also, I see mechanics in the number of trials, for instance, that somebody had to have that would be necessary, and a non-lawyer also intelligently indicated to me, how do we technically handle problems of this type? Do we need a criminal trial first of all to prove an individual did not really commit the crime and then a civil trial to award compensation that might be necessary? I think we wrought with problems and difficulties. I think Senator Rayburn had properly indicated earlier today that he had problems on the word "compensation." For instance, with a gentleman who might have an hourly wage as distinguished from someone who might be in a profession who is in a higher category of income. I just think it addresses itself to the legislature and let the legislature handle that problem.

Mr. Lanier: The constitution is subsequently adopted, is it possible that the legislature thereafter enact a statute that would require the local parishes to pay all these costs?

Mr. Casey: Well, depending on what is contained in the area of local government, the legislature might have that authority unless under the local government article that might be prohibited. I don't know. That matter addresses itself to the overall constitutional problem.

Mr. Lennox: As it stands now it's quite possible that the sixty-four parishes would be responsible for all of claims as they come due.

Mr. Casey: Well, I think that would be unlikely. I know it's a friendly question that you're asking but I think it might be unlikely that the legislature would do that, but I think they could impose some obligation on local government who's responsible maybe for handling, let's say municipal court violations or violations of city ordinances where somebody might go to jail. I think the state legislature might transfer the obligation of compensation for violations of city ordinances where a person is jailed to pay that adequate compensation.

Mr. Lennox: Well, persons convicted from Orleans Parish and subsequently found to be innocent could it possible follow that at some future date Orleans Parish would have to make good the claim by some legislative act?

Mr. Casey: I think it would be possible for the legislature to pass legislation to that effect.

Mr. Avant: Mr. Casey, I agree with your opening remarks. There's nothing worse than a man going to jail for a crime that he didn't commit. But let me ask you this: I'm sure that if it is possible for the people are going to know what the law is, the juries are going to know about it--do you think that this is something that will be lurking in the shadows that there's a possibility that what therefor was a reasonable doubt might become an unreasonable doubt?

Mr. Casey: I honestly don't think so.

Mr. Avant: You don't. Alright.

Further Discussion

Mr. Lanier: Mr. Chairman, I'd like to announce an amendment entitled "Right to Property." Mr. Lanier, Mr. Jenkins, Mr. Heine, Mr. Chastelain, Mr. Burson, Mr. ...

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Two different places, "except for a public and necessary purpose that with just compensation paid to the owner," and down here it says "in all expropriations, any party shall have the right to trial by jury and the owner shall be compensated to the full extent of his loss." In this document we have expressed our faith in the sacredness of property. It seems to me that in this amendment that is presently before us, we have an opportunity to express our faith in the sacredness of human life. Now, it is possible to raise some legal technicalities as Mr. Casey and others have done. But let me remind you that you've got legal technicalities in this other amendment which we passed. Methods have been found to bring about reasonable compensation and I think we can assume that if we pass this amendment that ways can be found to provide reasonable compensation to take care of this matter. Society should do all that it possibly can to take care of persons who have given years of their life and have later proved to be innocent, and it seems to me that this is a question of our sense of values, and I implore you to support this amendment, to recognize that this is a conversation about giving our faith in human rights as well as in property rights. Thank you.

Further Discussion

Mr. Fontenot Mr. Chairman, fellow delegates, I'm going to try to be real brief and I'm going to call the previous question as soon as I'm through with my remarks. I'm in opposition to this amendment not from not wanting to compensate individuals who are subsequently found not to have committed crimes, but I'm against it mainly for the reason that I think this is a legislative matter. I say it is a legislative matter because there are many problems with this amendment. I'm going to show you how many problems that I think we have with this amendment and if we put this in the constitution, there's going to be a lot of litigation over these problems. First of all, suppose somebody is convicted of a crime and he goes to Angola and somewhere in Angola he gets in a fight with somebody. Now, there's nowhere in here where his family is compensated when subsequently somebody admits to the crime that he was convicted of. That's the first bug in this amendment. His wife and kids don't get compensated, just him but he's dead so nobody gets compensated, and he didn't even commit the crime. The second problem... this will probably be repetitious, but I want to show you how many problems we have with this. How do you get proven not to have committed a crime? What will the test be? Do you have to be proven innocent beyond a reasonable doubt? What kind of hearing are you going to be entitled to? A criminal hearing or a civil hearing? Can you get a jury? Do you have a criminal jury put you in Angola for? These are just questions I'm throwing out, I don't know the answers and a lot of us here don't know the answers, that's why I'm saying it's a legislative matter. A third problem: somebody mentioned how the state makes mistakes and innocent individuals end up in the penitentiary. The state also makes mistakes when arresting criminals and these mistakes cause as not advising a criminal of his individual rights allow criminals to get off on technicalities. You might call them substantive rules, but I call them procedural technicalities allowing criminals to get off scot free. Now, does that victim of this crime have a constitutional right to compensation? Senator De Blieux said he has a right to compensation in the statutes, but he doesn't have a constitutional right. Another problem, a fourth problem: Suppose, Mr. Willis brought this problem up and I want to just repeat it, a criminal in Angola say, from New Orleans, he was convicted of robbery and he's in there for ten years; suppose a subsequent criminal... a second criminal from New Orleans, maybe his cousin or a friend, gets sentenced to life imprisonment in Angola, no parole---well, this second criminal could admit that he committed the robbery and the first guy could get off, and get compensated for the time he served in Angola. This is another problem. Now, a fifth problem is what

is adequate compensation, like Mr. Casey said. I think all of these problems I've pointed out are legislative in nature and should be handled by the legislature and not by us.

Further Discussion

Mr. De Blieux Mr. Chairman, and ladies and gentlemen, it won't take me long to make my arguments. The first thing I want to say about this, as has been previously stated, we didn't mind putting into the constitution those words protecting property rights. We wanted to award just and adequate compensation when the state or any other political subdivision took some property from an individual. Here we're talking about not the criminal who got out and did something to an individual liberty and rights of a person have been taken by the state. Are property rights more important than human rights, individual rights, personal liberty? That's what this amendment is all about. We did not ask that those particular matters insofar as property rights be taken care of by legislation. We didn't want to wait and let the legislature take care of that. Why can't we do the same thing insofar as individuals and liberty is concerned of the individual? That's what is involved here, and that's what we are saying: That the legislature shall provide for this compensation. Sure we want to be sure that the legislature does that. That's why we want to put this in the constitution, and I'll tell you this: If you'll compare the two, there's a whole lot more language that should go into the statutes with reference to the adequate compensation for property rights than we are asking to be done for human rights and individuals. So I therefore ask you, this is a simple mandate to the legislature to take care of some individual human rights when the state has done an injustice to an individual, therefore I ask you to approve and adopt the amendment.

Questions

Mr. Jenkins Senator De Blieux, I certainly agree with you in your support of this proposal. But let me ask you, you seem to keep referring to human rights versus property rights; isn't the right to own property a human right. In fact, one of the most human rights?

Mr. De Blieux That's right, Mr. Jenkins, I think they are both important rights and I don't think we should subordinate one to the other. Let's put them both on the same and equal plane. That's the only thing that I ask you to do.

Mr. Weiss Mr. De Blieux, isn't property a tangible item, whereas justice is an intangible matter?

Mr. De Blieux There may be, but I think they are both very important. We can feel our human rights and our individual rights if you're placed in a prison. It's just as important to you as the dollars you may have in your hand from the property.

Mr. Weiss But don't you think it's improper to equate the two? Property and life are two entirely different matters.

Mr. De Blieux They are very important, both of them.

[Previous Question ordered.]

Closing

Mrs. Warren Mr. Chairman, and honorable delegates, the first thing I would like to say, I think human rights should come above property rights. You tie them all in together. I have listened and I have listened and I have been patient, and I'm not going to stand here and debate it. Senator De Blieux stood up and he told you about the property rights and what we're going to have to have. You're going to have to have some judgment and the legislature is going to have to make the decisions. The legislature is going to have to make the decisions as far as this amendment that I have before you. At this

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of the convention, I want you to really consider the fact that we're dealing with the Bills of Rights sections. I think that the arguments that have been raised in opposition to this amendment are arguments that on their very basis, you can really tell that they hold no merit. This provides that the legislature shall provide for the adequate compensation for persons who are not criminals, but persons who have been convicted and have been proven innocent. I have no problem...I would say to those who say "How do you prove someone innocent?" How are innocent people released from prison today? There is a method for it. I want to strongly suggest to you that---and you know, it's no down-grading of our consideration for property rights, but I think Reverend Stovall showed you nothing but legislative material that we have constitutionalized and used such vague terms as "the fullest extent of his loss." You know, what does that say? How can you define that as compared to adequate? I want to strongly suggest to you that this amendment does not do any violence whatsoever to any of the reservations that I've heard some of the opponents mention. I would strongly like to end by saying because, I will be repetitious, that we are not talking about the criminal. We're talking about a man as we come up to this platform and say, "you know, we aggrieve." We're talking about a man who has lost status, ability to get a job, his family has suffered, possibility of his citizenship's rights taken away from him, and we're saying that it's legislative matters. What it does provide for is the legislature to set up procedures and methods of implementing this constitutional provision. That's all it does. It does not call for three trials, as you've heard. Does it call for three trials now when the state...when somebody is convicted and later they found that he's innocent? Does it call for three trials? I suggest to you, no! I want to end by saying that when we're in danger, the liberty of one individual, we're in effect endangering the liberties of us all.

tabled.]

Point of Information

Mr. Lennox Point of information, Herr Fuhrer.

Mr. Henry State your point.

Mr. Henry You bet your "bippy".

Mr. Lennox was appointed to represent industry, however, he has so far done a beautiful job of representing a certain party other than industry.

REPORTS OF COMMITTEES

47th Days Proceedings—September 14, 1973

Friday, September 14, 1973

ROLL CALL

[100 delegates present and a quorum.]

PRAYER

Mr. De Blieux Our Heavenly Father, we thank Thee again for the privilege of gathering here. We ask that You give us guidance this day, that we may go about the affairs of the State of Louisiana for the best interest of all of its citizens. We ask Thy blessing upon the delegates here assembled, and that they may have true charity in their heart to approach this situation from a standpoint of what's best in Your service, not from any personal or animosities or uncharitableness towards any other delegate. We ask all of this in Christ's name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES LYING OVER [J Journal 479]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Unfinished Business.

Committee Proposal No. 25, introduced by Delegate Alphonse Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, which is a substitute for Committee Proposal No. 26, introduced by Delegate Jackson.

The status of the proposal, that the entire proposal has been adopted, the individual sections proposed have been adopted as amended with the exception of Section 7, Section 8, and Section 24. Additionally, one new section, Section 26, dealing with freedom from discrimination has been adopted or added to the proposed Section. Further amendments now stand at the desk concerning the proposed addition of further sections.

Amendment

Mr. Poynter Delegate Derbes sends up amendments. Copies of the amendment are presently being distributed.

On page 7, between lines (if it's all right with you, Mr. Derbes) between lines 15 and 16, insert the following: (make it Section 27 instead of 25)

Section 27. Right to a Healthful Environment
Section 27. Consistent with health, safety, and welfare of all people, the people have a right to a healthful environment."

Explanation

Mr. Derbes Good afternoon, ladies and gentlemen. Mr. Chairman, The United States of America is almost two hundred years old. The framers of this constitution, of the original Federal Constitution, in my opinion, did an excellent job in interpreting by broad and general provisions, and in providing for by broad and general provisions, the developments of conflicts which occur between human rights and governmental controls. One, I think, area that did not occur to them which would not have ordinarily occurred to them because this country had not progressed to the current state of industrialization that it is now, is the right of a healthful environment. This amendment seeks to establish that right, but not in the nature of a privilege, which is to say, that the individual seeking to assert this right to a healthful environment cannot, in so asserting, deny to others the rights to food and fiber, for example, for their health and benefit. The right to transportation or to hospitalization for their benefit. But, it does announce a substantive policy and a substantive right that an individual can establish and can

assert in order to provide and in order to declare that his environment shall be free from unnecessary pollution, free from unnecessary interference on the part of others. So, I urge your favorable consideration of this amendment.

EXPLANATION

Mr. Roy Who told you that the Bill of Rights didn't consider this type of provision?

Mr. Derbes Nobody did, Mr. Roy. If you go back to me, I said the framers of the Constitution of the United States of America, when they met almost two hundred years ago, failed to so provide because this country had not at that time entered into a stage of industrial development equivalent to that of today.

Mr. Roy Do you know that the Bill of Rights considered this? I had a proposed section on it and after going into it, I voluntarily pulled it from the committee itself.

Mr. Derbes I had understood that to a certain extent, and perhaps you can elaborate on that a little further. It seems a sound provision to me--a basic constitutional right to me. I'd be interested to know what criticism you have of it.

Mr. Roy Don't you think it's a non self-executing type clause that everybody already has a right to and doesn't need to be stated?

Mr. Derbes Mr. Roy, as I understand the provisions of the law, individuals are, in most instances, required to prove things in the nature of nuisance in order to establish what may be environmental rights. Or people are required to resort to federal environmental protective statutes which, in my opinion, may be unduly burdensome not only... and particularly on the part of industry. I am simply announcing a substantive right to a healthful environment in the constitution, and relying on the courts to interpret it equitably consistent with the health, safety and welfare of all the people.

Mr. Lennox Mr. Derbes, would you tell me, please, who would decide if this amendment were adopted, where a healthful environment begins and/or ends?

Mr. Derbes Mr. Lennox, it would be a matter of judicial interpretation much as the due process clause of the United States Constitution, the equal protection clause of the United States Constitution, the right against self incrimination, the right to trial by jury, etc. are also provided therein.

Mr. Lennox That provokes my second question. I would assume, then, that each so-called violation of the healthful environment would be tried in the various courts of the State of Louisiana.

Mr. Derbes It would be determined on the basis... it would be determined, I think, in terms of local law, local priorities, local preference.

Mr. Lennox There could be sixty-four or one hundred and sixty-four different yardsticks under which we would measure healthful environment, then.

Mr. Derbes Well, in the orderly development of law, Mr. Lennox, cases of this nature begin in the trial court, advance to the court of appeal, and then to the Supreme Court. Ultimately, a uniform standard or a uniform application of rules would eventually occur.

Mr. Lennox Ultimately, and eventually, is when? Would you define that for me? Ten years, twenty years?

Mr. Derbes In the same manner, Mr. Lennox, that any new substantive right created by the legislature or created by this constitution would develop--

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Mr. Munson Mr. Derbes, would you consider a smokestack an unhealthy environmental factor, such as cotton gin, sugar mill, Standard Oil?

Mr. Derbes Mr. Lennox, I think.

Mr. Munson Mr. Derbes.

Mr. Derbes I'm sorry. I beg your pardon, Mr. Munson. I think that the individual should have a right to a healthful environment. I'm going to try to answer your question precisely. I think that in some cases smokestacks may represent an unnecessary or an unjustifiable encroachment upon the environment of neighbors and by the same token, smokestacks of equivalent production may represent a completely justifiable and supportably legal encroachment upon the health, safety, and welfare of other neighbors. In other words, I think it depends upon the situation.

Mr. Munson But, don't you think that the way your amendment reads which says, "The people have a right to a healthful environment," could mean almost anything?

Mr. Derbes No, I don't, to answer your question again. The controlling language of the amendment seems to me to be clear, and that is consistent with the health, safety, and welfare of all people; and in whatever the ultimate decision may be, the very factors of manufacturing and production, for personal well-being, the very necessities of life can be considered in determining whether or not a person's right to a healthful environment has been unnecessarily invaded.

Mr. Munson One final question, Mr. Derbes. Did you know that I think you have a very bad amendment?

Mr. Velazquez Delegate Derbes, this wouldn't allow somebody to pass the Esso refinery, think that they didn't like the smell and go ahead and have that refinery closed down?

Mr. Derbes In order to assert a legal claim under this amendment or under any other provision of this constitution a person has to be personally aggrieved.

Mr. Velazquez Fine, I think you have a very fine amendment here, Mr. Derbes.

Mr. Derbes That you. Perhaps you and Mr. Munson can get together.

Mr. Weiss Delegate Derbes, this poor amendment I'd like to question you on. . .

Mr. Derbes Poor, poor floor or poor.

Mr. Weiss Poor, poor floor amendment.

So much time was spent by the committee on such issues and eliminated, that I thought you might be interested in one that could come up, and wouldn't it be in conflict with federal problems. For example, suppose, as we all know, that in a closed cabin such as an aircraft or a train, heavy smoking might pollute the atmosphere and, of course, be unhealthy for the average individual who is unaccustomed to that. Therefore, in planes flying over Louisiana or coming through [through] the state of Louisiana, if this was eliminated, would this note come in conflict with some federal regulation or law that might later develop?

Mr. Derbes In a closed cabin, the answer.

Further Discussion

Mr. Munson Mr. Derbes, suppose, as we all know, that in a closed cabin such as an aircraft or a train, heavy smoking might pollute the atmosphere and, of course, be unhealthy for the average individual who is unaccustomed to that. Therefore, in planes flying over Louisiana or coming through [through] the state of Louisiana, if this was eliminated, would this note come in conflict with some federal regulation or law that might later develop?

because we've got another section on the environment which covers agriculture, food production, etc. It looks to me like that we are getting the right to a clean environment a little bit ahead of the right to have food. I don't know whether starving to death, being clean is any worse than probably eating a little better and not having quite so much cleanliness. I don't know how you work it out. If you take a bath, you pollute the water, and if you don't take a bath, well, you have probably polluted the environment by not bathing. But, if we're going to start out, and I don't know how an ultimate clean or an ultimate dirty court, Supreme Court, a federal court, would rule down the line if we put a section in here that lead special emphasis to a clean environment, they could well read that that meant it would take precedence over your right to food production. If we are going to guarantee in the constitution that everyone is going to have clean environment, then I think maybe we better add in this same section and guarantee that everyone has a bountiful supply of food. Then, guarantee the producers of food that we are going to have sufficient research that we can maintain that production for the future of the country. To give you an example of what we're looking at and what I face when we start dealing with these kind of topics, we recently had a meeting in northeast Louisiana, in fact, in Winnsboro I know Mr. Goldman and others are very familiar with the area. We had the cotton ginners there representing about a fourth of the total cotton production of the State of Louisiana. They had been told that you can't burn anyone's trash because we were polluting the air. He did say that you can blow the dust in the air, which will carry for hundreds of miles. There is probably more people allergic to the dust than there are the smoke because the dust doesn't fly as high. They said, "Well, you need to bury it." But the water control people said that we were going to pollute the water. But one very bright man who had his first job since he became educated said that one man in the area had solved his—he blew the trash in the pasture and fed it to the cows. But, we are turning around and feeding the milk from the cows to the babies, and feeding the beef to the humans. When I asked him what that situation would be, he said, "... that's a health problem. Let them worry about it. All my job is, is to clean up the air." We're looking at an overall economy in Louisiana. We're looking at the fact that we've got to produce. Somewhere in this field of production we've got to meet the happy medium of a balance between of what it takes to do a good job of producing under good management, and also keeping our environment, our water, as clean as it's possible to do. I'm going to vote against this for the simple reason that I don't feel that we need to put a special emphasis in the constitution on clean air, which could supersede the production of food. If you adopt this, I'm going to offer amendments further down the line that is going to guarantee in the constitution, every man's right to a bountiful supply of food—every producer's right to a bountiful supply of research whereby he can produce that food. I think one is just as important as the other, and I think it's wholly out of place to guarantee anyone cleanliness. The only thing you can guarantee as near as possible is giving the power about it to the state and the federal government and the people.

Question

Mr. Derbes Mr. Munson, I think you should be the one to ask the question. I think you should be the one to ask the question. I think you should be the one to ask the question.

Mr. Munson Mr. Derbes, I think you should be the one to ask the question. I think you should be the one to ask the question. I think you should be the one to ask the question.

[The speaker's name is not legible.]

Closing

Mr. Derbes We all realize that we have come to a point in a modern industrial society where we are living together in such close proximity and where uses that we each make of our respective private properties may, in some instances, redound to the substantial personal detriment of others. We have announced substantial private property rights in this constitution. We have provided for the right of the individual to use and to control and to dispose of his private property. I say to you that there is a legitimate personal right of the individual to enjoy, wherever possible and insofar as possible, a healthful environment. An environment which tends to encourage life as we know it rather than to pollute and to destroy life as we know it. The provisions of this amendment as presently proposed permit the judicial bodies of this state to give due consideration to all aspects which relate to health, safety, and welfare, including those aspects referred to by Mr. Womack in his criticism of this amendment. So, I urge you to make a twentieth century provision in this constitution. We have labored one and hard over the essentials of a document which is almost two hundred years old. We have slightly defined them and slightly expanded them, but we have made no substantial progress, in my opinion, in establishing a new right which reflects the problems of our twentieth century industrial society. So, I urge you to favorably consider this amendment as a method for guaranteeing to yourselves and future generations a healthful environment which will permit them to thrive and to flourish in an atmosphere of safety and in an atmosphere of comfort, despite the problems of the human zoo that we now frequently find ourselves living in. Thank you.

Question

Mr. Hayes Mr. Derbes, wouldn't you have to grant a certain amount of pollution in order to guarantee health and safety, for example, like a fuel shortage? We have a fuel shortage now, and we have to pollute in order to overcome this shortage. Don't you have to grant some pollution in order to overcome such shortage?

Mr. Derbes Absolutely, Mr. Hayes, and what I'm trying to get across to the delegates here, and maybe I'm not being very successful, is that all of the various considerations for the furtherance of life can be taken into consideration. The necessity for fuel and transportation, for education and hospitalization, for food and fiber, all of these things in determining what is consistent with the health, safety, and welfare of the people can be taken into account.

[Amendment rejected; 32-80. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Jenkins]. On page 7, line 16, add the following section:

"Section 26. Freedom of Association
Section 26. No law shall impair the right of each person to associate freely with others."

Explanation

Mr. Jenkins Mr. Chairman, delegates, this section is very similar to the amendment that we considered yesterday except that it would put the right to freedom of association in a new section. This concept has been in the Bill of Rights since it was proposed by the committee. If you check your committee proposal at Section 7 of the original committee proposal, you will see that the last sentence of Section 7 attempts to protect the right of every person to associate with others. Of course, we had felt that it would be included in the antidiscrimination section, but because of the large number of amendments, it was not. Also, because a number of people felt like it would not

be appropriate in that particular section. Let me tell you a little bit about this right to freedom of association. It is recognized in a large number of constitutions. Sometimes it is a separate section; sometimes it is included with the right to assemble peacefully because it is a somewhat similar right, although not the same. Freedom of association, of course, deals with the right of people to join together in organizations, societies, and ventures. It does not deal with the right for them to be physically present at a particular place—that's the right of assembly. Here are what some other constitutions say about it, just to show you the magnitude of this particular right. The German Constitution says this: "All Germans have the right to form associations and societies." The Canadian Constitution recognizes in its Section 1, the freedom of assembly and association. The Universal Declaration of Human Rights, to which more than a hundred and twenty nations have signatories, says "Everyone has the right to freedom of peaceable assembly and association." The European Convention on Human Rights, signed by most western European nations, says "Everyone has the right to freedom of assembly and freedom of association with others, including the right to form and to join trade unions for the protection of interests. I was reciting a number of other constitutions and international agreements that clearly recognize this right as fundamental. Sometimes, of course, as I said, this right is in a separate section of the document—the right to freedom of association. Sometimes it is included with the right to assemble peacefully because it is a somewhat similar right, although not the same. The difference being, of course, that freedom of association deals with the right of people to legally join together in societies, organizations and ventures, whereas the right to assembly deals with their right to come together physically in a particular place. Another example, in addition to the citations already given, would be the American Convention on Human Rights signed by every nation in the western hemisphere, which recognizes that in its Article XVI, "Every one has the right to associate freely for ideological, religious, political, economic, labor, social, cultural sports and other purposes." This is a well recognized principle and ought to be given recognition in our state constitution. The reason that it's being offered in this manner is because it was originally intended to be included in Section 7, but the version of Section 7, of course, that was finally adopted was somewhat different. The committee has agreed to it, and I urge the adoption of this section. I might also mention that Style and Drafting might want to consider consolidation of this section with the freedom of assembly section. There would be no substantive change and only slight wording changes to do so. But because we have already approved the freedom of assembly section, and that was, of course, before we dealt with the discrimination section, it is necessary to do it this way, I think. So, I urge the adoption of the section.

Questions

Mr. Tobias Mr. Jenkins, I am reading your amendment, and you say "No law shall impair the right of each person to associate freely with others." Do you not mean that "no law shall impair the right of each person to associate or not to associate freely with others?"

Mr. Jenkins This is implicit in it because if it were... it would not be a free association if one of the parties to the association did not agree. So, this is implicit in it.

Mr. Tobias My next question is this. You referred to the German Constitution--has a provision similar to this. Were you referring to the East German, West German, or the National Socialist Constitution?

Mr. Jenkins No, this is the West German Constitution.

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Mr. Avant Mr. Jenkins, as I understood your remark, the right to associate, according to your understanding of your amendment, would carry with it the corollary of the freedom not to associate. Did you make that statement?

Mr. Jenkins Yes, that's right, and if the law could impair the right of each person to associate freely," so naturally, a person could contract that away if he so chose, but no law could impair it.

Mr. Avant Now, my question is this. By rule of court which has the effect of law, every member of the Louisiana State Bar Association, would that fall by the wayside if this was adopted?

Mr. Jenkins No, I don't think so because this pertains to, in effect, a public official because each lawyer is an officer of the court, and I think that he, in order to accept this privilege, he has the opportunity to do this or not do it.

Mr. Avant If he is a person, is he not--a lawyer?

Mr. Jenkins Yes, he is a person. That's right.

Mr. Avant He has the correlative right not to associate. Would it not follow that he does not have to associate himself into the Louisiana State Bar Association if this is in the constitution?

Mr. Jenkins Well, I don't think that that would be applicable, but the most that that could possibly mean was that he wouldn't have to pay dues to that association. It certainly wouldn't forbid any sort of regulation of standards or quality or anything like that.

Mr. Jenkins Now, under the conditions to paroles, that people who are paroled not associate with certain ex-convicts, known gamblers and things like that, and that they not frequent barrooms. Would those type of rules which have the effect of law fall by the wayside if this is in the constitution?

Mr. Jenkins No, because a person voluntarily agrees, if he is going to be let out of prison on parole or probation, to abide by certain terms and conditions. He is getting a special benefit--a special privilege. Otherwise, he would be confined to prison, he voluntarily does that and so it wouldn't change that at all.

Mr. Alexander Mr. Jenkins, does your amendment imply that if a particular group is using a facility, a public facility like a park or a beach, that this group may say under the provisions of this amendment that we are using this beach and in order to assure our freedom of association, we don't want anybody else to use this public facility? Is that a fact?

Mr. Jenkins No, you see, this deals with the right to legally associate. What you're talking about is the right of assembly--the right to come together. We've already said that people have that right under another section. This deals with the right to make interpersonal relations on a legal basis, and so it's an entirely different concept.

Mr. Alexander When you say interpersonal relations, is that a legal relationship?

Mr. Jenkins No, I don't think that marriage would be within this concept. I don't think that it would be within this concept. I think that's the term implied by "association."

Mr. Alexander Well, just what do you mean, Mr. Jenkins, when you say "interpersonal relations"? You know, ordinarily, it means a relationship between two or more persons.

Mr. Alexander of jurisdictions where it is, it pertains to organizations, societies, ventures and things of this nature. For example, the U.S. Supreme Court said that we do have a right of freedom of association in the case in which the N.A.A.C.P. was trying to be forced by a state to divulge their membership rolls. The court said they would not be forced to divulge their membership rolls because this would be contrary to the principle of freedom of association. Now, that's the sort of right that we are talking about.

Mr. Alexander I see. Then you have reference to organizations as such. Private organizations, private clubs that possibly, say, you must have a membership card to enter a certain restaurant--unless you are a member you cannot enter?

Mr. Jenkins I think that that would be within the purview, yes, any sort of private association or organization, country club, civic group, fraternal organization, religious association.

Mr. Alexander Or, for example, I may not join the Klan. Is that right?

Mr. Pugh Mr. Jenkins, somewhere in my readings of what we have yet to consider, there is a statement to the effect that every corporation must file the list of their stockholders, I believe, with the secretary of state. Now, if there is a corporation, and it's a nonprofit corporation, and it consists of several people who want to associate with each other, does this mean that that law can or cannot be passed?

Mr. Jenkins No, it would not prohibit such a law for this reason. The formation of a corporation is a grant of certain special privileges by the state. Namely, limited liability, and things of that nature. In order to take advantage of that special privilege, certain requirements must be made of a group. But if a group is formed, a private group that asked no special privileges, asked no special liability, I think that that would be prohibited.

Mr. Poynter Delegate Goldman sends up amendment the amendments to be passed out here in just a second.

Section 26. The right to trial by jury shall not be abridged in civil cases, however, the legislature may provide for exceptions to this right of trial by jury by two-thirds vote of the elected members of each House of the Legislature. Determination of facts by an administrative body shall be subject to review.

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ence and the amendment on Section 8 was to strike the whole section which was adopted. So the chair is going to rule that this is not identically the same, this amendment is not identically the same as that was stricken in Section 8.

Proceed, Mr. Goldman.

Explanation

Mr. Goldman Thank you, Mr. Chairman and fellow delegates, to start off with, I am going to read this again because I don't know whether you were paying attention when the Clerk read it.

"The right to trial by jury shall not be abridged in civil cases;" however, the legislature may provide for exceptions to this right of trial by jury by a two-thirds vote of the elected members of each house of the legislature. Determination of facts by an administrative body shall be subject to review."

My understanding is that because our state is unique in its Civil Code, without common law, we have no constitutional guarantee to a trial by jury in civil cases. Now I believe the people of this state are due this guarantee as a constitutional right. Therefore, our new constitution should provide this guarantee with reasonably statutory exceptions which this amendment provides for.

Therefore, the first sentence in my amendment provides this. The second sentence in my amendment provides for review of facts determined by an administrative body. Now I personally have heard but one objection to this provision even by eminent attorneys in our body. There may be others, but I've only heard one. This section provides the basic law which should rightfully be anchored into the Bill of Rights Article of our constitution while providing for legislative action for proper exceptions.

I earnestly hope that this section will be adopted.

Questions

Mr. Lanier Mr. Goldman, am I correct in reading that this is an absolute right in all cases unless modified by a two-thirds vote of the legislature.

Mr. Goldman The exception is to be provided by a two-thirds vote. When we discussed this in Article VIII, I think the main objection here and all the rigamarole was over the fact that we had stated certain exceptions and other exceptions were left out and we got into a whole hassle about it. So this provides for the legislature, where it rightfully belongs, to provide all the exceptions to this by a two-thirds vote.

Mr. Lanier But, would it be true that if the legislature wasn't able to muster a two-thirds vote that we'd have jury trials, and interdictions, succession proceedings and divorce and separation cases and quo warrant cases and injunctions and... might that not be true?

Mr. Goldman That may be true, but I have enough confidence in the legislature to feel that they will provide those exceptions by a two-thirds vote. I'm one who doesn't express unconfidence in the legislature. If we don't have any confidence in our legislature, I don't think we need one.

Mr. Juneau Mr. Goldman, I'm a little confused. Isn't this really in substance the same basic provision that we've considered three times in this convention already?

Mr. Goldman It's a provision to provide trial by jury in civil cases with exceptions that would be provided by the legislature.

Mr. Juneau Haven't we previously, on three separate occasions, voted on the very same question as to whether or not you shall not abridge the right of a jury trial in civil cases?

Mr. Goldman We may have, but we didn't pass this article and I think this article ought to be in the constitution.

Mr. Juneau Do you know what the votes were on the past three provisions of a similar nature that we had?

Mr. Goldman No, but I know that when we were discussing it, there was a lot of commotion in here and I don't know how many people really paid attention to what they did. So I thought I'd bring it up again for your consideration.

Mr. Juneau You think they were confused on all three occasions?

Mr. Goldman I don't know whether they were or not. Let's see now, whether they are.

Mr. Derbes Excuse me, Mr. Goldman, but this would apply to all small claims and to all juvenile court matters, wouldn't it?

Mr. Goldman It would apply to all civil cases that weren't excepted by the legislature.

Mr. Derbes And the only way the legislature could except, say twenty-five dollar claim in a Justice of the Peace Court or ...

Mr. Goldman The legislature could make provision for a certain limitation on the claim.

Mr. Chatelain Delegate Goldman, I'm having a little problem as a business man trying to determine in civil cases what amount... at what point in time do you have a jury to hear a case?... a man's being sued for a hundred dollars, for instance, does he have a right to have a jury trial?

Mr. Goldman I just said, if the legislature wants to set a certain limitation on it, they can do it. I don't know what the legislature's going to do.

Mr. Chatelain Thank you, Sir.

Mr. Goldman Well, they can keep the thousand limitation.

Mr. Goldman Yes, Sir.

Mr. Roemer Delegate Goldman, why the two-thirds vote? What clear and present danger is there in a majority vote that bothers you?

Mr. Goldman Well, everybody seemed to have so much suspicion of the legislature, I thought the two-thirds vote would be good in there. If you don't have any suspicion, I don't mind removing the two-thirds... the majority vote of the legislature...

Mr. Roemer Well, I thought you just said a few moments ago that you held no such suspicions.

Mr. Goldman I don't.

Mr. Roemer Well, your amendment does.

Mr. Goldman Well, the people here have expressed those suspicions so I thought I'd allay them.

Mr. Dennis Mr. Goldman, do you realize that when the guarantee of a jury trial in civil cases was placed in the United States Constitution that some people thought this was necessary because most of the judges in the states at that time were appointed for life and this is the pattern that the U.S. followed?

But don't you think here in Louisiana since we've shortened the terms of judges and insisted that they be elected that they are responsive enough to the people and we don't need to guarantee a civil jury trial in every case and make the legislature go back and enact these exceptions in

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Mr. Goldman: I think we ought to have this in the constitution, Judge, and I'd like to see it in there. That's the only answer I can give you to that. I don't have any suspicion of the judges either, I think the judges are all fine people. But I think the public has a right to a jury trial in a civil case of certain natures, and the legislature can provide the natures or the exceptions.

Mr. Dennis: So I take it you would like for the legislature to reenact all of these....I count about twenty exceptions here that are in the Code of Civil Procedure, now. They would have to go back by two-thirds vote and reenact these. Otherwise, suits on a promissory note for a hundred dollars, that would be subject to jury trial, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, workman's compensation, emancipation, tutorship, interdiction, curatorship, guardianship, filiation, separation from bed and board, annulment of marriage or divorce proceedings....all these would be subject to jury trials, under your provision.

Mr. Goldman: If the legislature wants to make exceptions in any of those, they have that right to do, and if someone wants to put an amendment to this to have the legislature decide by a majority vote, it's alright with me, I'll vote for that amendment....take out the two-thirds vote.

Mr. Singletary: Mr. Goldman, since we have provided for appellate review of facts in civil cases, what good does your amendment accomplish? What sense is there in having a jury trial?

Mr. Goldman: Well, I think they ought to have a jury trial in their original trial.

Further Discussion

Mr. Pugh: Mr. Chairman, fellow delegates, I said Willis, I didn't say anybody else, I rise in opposition to this amendment and I sincerely hope that Mr. Goldman didn't ask me about it earlier and I gave him any encouragement. If I did, I apologize. Unfortunately, the amendment would give these many things that would....that these people have been asking questions from the floor about. It would throw us open to jury trials in every instance. I'm also concerned about the two-thirds. I think it ought to be a simple majority.

I am in agreement that there should be a provision somewhere here relating....in the constitution relating to civil jury trials. At this point, we don't have anything on it. I think we ought to have something on it. But I am concerned about this one that throws it open for every phase of the law and, also, that requires a two-thirds amendment.

For that reason, I rise in opposition.
Thank you, Mr. Willis.

Questions

Mr. Fontenot: Mr. Pugh, do you recall if Section 8....when Section 8 was voted on that we decided to delete all this language because we thought it was unconstitutional?

Mr. Pugh: I may or may not have heard more about that. I was in the room that day.

Mr. Fontenot: Section 8, which said, "the right to trial by jury."

Mr. Pugh: Yes, sir.

Mr. Fontenot: "....Trial by jury in civil cases.. do you recall Mr. Duval's amendment that did away with this because it was unconstitutional?"

Mr. Pugh: Sir, I spent probably three hours working on the amendment that was proposed at this delegation relating to civil jury trials, so I'm

very familiar with that. I think the amendment that was proposed ought to be something in the constitution relating to civil juries, but I didn't think this ought to be it. That's all.

Mr. Flory: Mr. Pugh, do something else to do with the last sentence in the proposed amendment.

Would this not give judicial review of fact now on administrative determination made by, let's say, the Division of Employment Security an unemployment insurance case which they do not now do?

Mr. Pugh: Yes, it would have that right.

Mr. Berry: Mr. Pugh, wouldn't this amendment make it possible to have a jury trial where the issue was really an equitable issue?

Mr. Pugh: Let me tell you that you were brought in by the framers of the constitution. There is no difference between common law and equitable provisions and fact provisions. It is true that we don't have a separate equity court.

Now what this would do, this would allow your jury trial in the J.P. Court.

Mr. Berry: Yes.

Mr. Munson: Mr. Pugh, this amendment starts off by saying "the right to trial by jury shall not be abridged in civil cases." Doesn't that mean that the state would be paying for this trial which is really an issue between two people or individuals?

Mr. Pugh: No, sir. I think that cost may be statutorily determined and in my opinion, this wouldn't make the state bear the cost of a jury trial.

Mr. Munson: You don't think it would be mandatory for the state to write that the state would pay the cost of a jury trial in a civil case?

Mr. Pugh: It is never set down in the constitution that the state is to pay for anything in a civil case.

A motion for adjournment was made.

Closing

Mr. Guarisco: I just think we are missing the point and especially in the second sentence....is that the determination of facts by an administrative agency is given more importance in a district court. I've been up there many times on review of facts and the convention in its wisdom doesn't want....they want to review facts....the courts to review facts. Well, let's be consistent and make the facts determined by an administrative agency, also, reviewed by the courts. Don't give the administrative agency....I might add this that administrative agency is an odd situation; even they make rules and they interpret their own rules and then the evidentiary proceeding by which they go is very, very poor. You don't have the evidence and so forth, you don't have the attorneys present, you don't have a judge or someone learned in the law. So, let's make it consistent and make the determination of facts by an administrative agency consistent with everything else in our judicial system.

The point about the civil jury, every state constitution that we looked at, guarantees the right of a person participating in the civil judicial process. This is no new move. As far as the employment security commission, you know and we have provided for that in the Constitution.

Thank you for supporting the amendment.

Questions

Mr. Fontenot: Mr. Guarisco, remember the last time we had a jury trial in a civil case, it was in 1968. It was a very long time ago. It was a very long time ago.

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what will happen; well, there will be one bill that will be introduced in the next session of the legislature exempting all the things presently exempted from trial by jury but preserving the basic right so this won't cause any problems at all, will it?

Mr. Guarisco Certainly not, in the present one, anyway, the jurisdictional amount is a thousand dollars and the legislature can pass all its exemptions in a transition from the new constitution. That shouldn't be any problem at all.

[Amendment re-rejected: 22-21. Motion to reconsider tabled.]

Amendment

Mr. Dwynter Amendment No. 1, page 7, between lines 11 and 12, insert the following:
"Section 25. Right to Preliminary Examination
Section 25. In all felony cases except those indicted by a grand jury, the right to a preliminary examination shall not be denied".

Explanation

Mr. Planchard I haven't....after that last vote. However, I think this is worthy of your consideration and I want to explain it to you.

What this does now, it changes the present status of the preliminary examination. Presently, a defendant or an accused has a right to a preliminary examination, but it's discretionary with the court whether or not it will be granted. You have to make application for it and it's within the discretion of the court.

What this amendment does is it makes a preliminary examination a matter of right for the accused. Of course the amendment as you have noticed, says "in all felony cases except those indicted by a grand jury." Of course we have provided for the grand jury now to....that the accused can go before the grand jury and he can have his counsel in the grand jury with him. This is a preliminary examination and that's why it's expected. However, for the other felony cases, a person should have that same right to a preliminary examination.

I was just handed a note asking me to explain what a preliminary examination is.

A preliminary examination is exactly what it is. You have a right to ask the court to grant an examination. You have a right to call the witnesses against you, and you have a right to do this in the court. The accused as they say, presently has a right to ask for it, but it is not an absolute right. The court could grant it for information or they can refuse it.

Now, I'm asking you, is it fair to have a preliminary examination in felony cases where a grand jury decides it and not when the individual is not accused by a grand jury?

I know that there will be objection because they'll say it will increase the number of cases in the preliminary examinations, that would be a burden upon the courts. That's a lot of poppycock. Sure there'll be more preliminary examinations. But a person accused should have that right to an examination. I think if the D.A.'s would be much more careful before they took a person to trial....if in the preliminary examination they find that his evidence is not as strong as he thought it was.

Questions

Mr. Kean A.J., I'm a little puzzled by the exception that you make with respect to a grand jury indictment, and as I understood your explanation, you indicated that you made this exception because the accused had a right to be in the grand jury room, etc., with counsel and that was in the nature of a preliminary examination.

But suppose you have an accused that is never brought into the grand jury? Suppose he is indicted without being in the grand jury?

Mr. Planchard Well, that is why I want the abso-

lute right for a preliminary examination in all felony cases, except that. I feel that if he has this right in the constitution, it raises it to the same status as the accused where the grand jury has indicted. You see what....

Mr. Kean In other words, the other section we adopted provides that if you are indicted by the grand jury, you have a right to preliminary examination?

Mr. Planchard Well, in essence that's what you have because the accused is brought before a grand jury. The evidence is presented to the grand jury. They are to make a determination whether or not the accused....there should be a true bill or not true bill.

Mr. Kean My point is, and there have been instances that I'm aware of where a person has been indicted by the grand jury who never got within two miles of the courthouse. Would he be denied under those circumstances a right to a preliminary examination?

Mr. Planchard It was not my interpretation, no. You're speaking of the exception....that we put in, "except those indicted by a grand jury." I appreciate your thinking on it. However, I still, with the exception....excepting the indictment by the grand jury that we have already taken care of it in another section of the Bill of Rights, and I don't think this is in conflict with that.

Mr. Munson Mr. Planchard, as you know, I'm not a lawyer. I believe you have cited that an individual, or the accused should have the right to a preliminary examination....that, in other words, that he should have that right indicating that it would be to his advantage to have a preliminary examination. Am I right?

Mr. Planchard I feel very definitely.

Mr. Munson Well, on the other side of the coin, a preliminary examination gives what advantage to the state, if any.

Mr. Planchard It gives this advantage. Just as the grand jury gives an advantage to stopping the proceedings at that point. If there is not enough evidence to convict a person, then he would not be brought to trial. It would end at that point. In that respect, it is helping the state.

Mr. Munson Well, wouldn't it also help the state that they would give some additional information that they wouldn't gain without a preliminary examination?

Mr. Planchard Ah....ask me that again, Mr. Munson. I'm sorry....

Mr. Munson I really don't know if I'm asking this right or not. I'm trying to find out if a preliminary....you have said that it would be to the advantage of the accused or the individual to have a preliminary examination. He should have that right. All right. That's in his favor. What I want to know, the other side of the scale. What advantage does the state gain against the accused by having a preliminary examination?

Mr. Planchard In that respect, they may not find out any more evidence, if that's what you are getting to. However,....however, in this instance, the accused is never made to testify against himself so you couldn't actually make him do so. But, as I stated before, the advantage on the other side of this coin is, if you can stop a proceedings before it gets started, there's really no merit to the charge because a person could be accused, say, of a theft, which they take it on an affidavit and the district attorney may take it all the way to trial before he really has all the evidence. And if, if he can determine before that time, then

justice, we shouldn't always be considered also... considering also, maybe, too much the cost if it gives justice. I believe you said that there would certainly be more preliminary examination. Would you, in your opinion, even though there would be more preliminary examinations, would you think there would be less trials and less cost as a result?

Mr. Planchard: Yes, because if you have more preliminary examinations, you would have more people who would be able to question witnesses or the accused to testify.

Any further questions?

Mr. Abraham: As I understand the preliminary examination, A.J., the prosecuting attorney and the defense attorney would be there in front of judge and would be able to question witnesses or the accused to testify.

Mr. Planchard: Just the accused....I mean just the witnesses against the accused....not force the accused to testify.

Mr. Abraham: All right, then, who would then make the determination as to whether or not there is a case and it should go to court, trial or not? Would they just mutually agree on it, or would the judge make a determination or what?

Mr. Planchard: Yes, to the judge.

Mr. Abraham: You mean the judge, whether he either says "Yes, tell the district attorney either to go ahead and prosecute" or he'd say, "No, you don't have a case. Don't prosecute."

Mr. Planchard: That's right.

Mr. Gravel: Mr. Planchard, I notice that this section does not provide for the right to a preliminary examination before grand jury indictment in a capital case. In other words, it would occur to me that it would be necessary to make this proposal as embrassive as it should be made, that we should insert in there the words, "capital and" before the word "felony" so as to make the first five...six words read "in all capital and felony cases." Would you have any objection to that particular amendment?

Mr. Planchard: I think if you insert the word "capital and" before the word "felony," it would be all right.

Mr. Gravel: Read it to me.

Mr. Planchard: "A felony is any crime for which an offender may be sentenced to death or imprisonment at hard labor."

Doesn't that take care of your question?

Mr. Gravel: Yes, that takes care of your question. Thank you very much.

Mr. Stinson: Mr. Planchard, I'm in favor of your amendment...section. But, I was wondering, some question was brought out about the person who did not appear before the grand jury, and your amendment presupposes that he has been there. After the jury there, if you would insert "after having personally appeared before such grand jury."

Mr. Planchard: That may clarify, I think, Mr. Stinson. That may clarify, I think, Mr. Stinson.

Mr. Planchard: That may clarify, I think, Mr. Stinson. That may clarify, I think, Mr. Stinson.

the purpose of the withdrawal, is to try to clear the amendment and what we want it to do. In the attempt to clarify it, we have included the word "after" except those indicted by a grand jury, a comma after "having personally appeared before a grand jury, the right to a preliminary examination shall not be denied." I think it is able to anybody and personally, I think it is able to withdraw it, put it back. I think it is no question about it because I think it is important amendment that has to be put into the constitution.

Further Discussion

Mr. Planchard: Let me explain what the purpose of a preliminary examination is for and then to you why I'm for not removing this amendment at this time, and I think we ought to pass it, because as much as I'd like to go along with Mr. Abraham because he has a right to a preliminary examination, and I know you all say well how in the world can Chris Roy say something different?...I do think that it destroys the real purpose of a preliminary examination.

The preliminary examination is a right that a person has under the present Louisiana law to have a judge decide whether there is sufficient evidence upon which he may be held at that time. Now, as it now exists, if you have absolute right to ask for it and get it, but in Louisiana you remember, except for those crimes which we...which are punishable by death, a district attorney can put you on his own Bill of Information. So the way it works now is if a defendant, an accused, a person who is charged with a crime, a crime, a crime, yet, and he asks for a preliminary examination, he goes to court. The more...the preliminary examination, the district attorney has to file a motion then files a Bill of Information. So if he has him with theft, let's say. At that time, he is no longer entitled to the preliminary examination to determine whether he should be held on any charge...that is whether there is any probable cause for holding him because in Louisiana the district attorney may charge. Therefore, the judge may terminate the whole hearing, and the only issue he may consider, if he wants to, is the amount of bail or bond.

Now, the U. S. Fifth Circuit just recently, in a similar provision, whereby a district attorney is allowed to obviate or to preclude the preliminary examination merely by filing a charge. So, for court reasons, I think correctly, I think it is right to have the person who is charged with a crime, something decide whether there's probable cause for holding him.

Mr. Planchard: Yes, that takes care of your question. Thank you very much.

Mr. Stinson: Mr. Planchard, I'm in favor of your amendment...section. But, I was wondering, some question was brought out about the person who did not appear before the grand jury, and your amendment presupposes that he has been there. After the jury there, if you would insert "after having personally appeared before such grand jury."

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Mr. Planchard: That may clarify, I think, Mr. Stinson. That may clarify, I think, Mr. Stinson.

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contrary to what Mr. Kean thinks, is because I believe, and we have to say it fully, that if a grand jury indicts you, then obviously there's probable cause for your being charged irrespective of it you appeared before the grand jury or not. It's that simple. I have to give a lot of weight to a grand jury indictment. So, once you've been indicted, whether you appeared or not, it should be enough grounds for holding you and for not giving you the right to the preliminary examination which is aimed only at whether, in fact, you should be held for a particular crime.

I would... I think, Mr. Kean, he may disagree with me; he may say that you know, you haven't appeared before the grand jury and that way you shouldn't be entitled... you should still be entitled to a preliminary examination. To be logical, to follow what I think is good law, I think the amendment is good and should not be amended as Mr. Kean would do so, although I think it makes it better for any accused because he would have two shots at it, so to speak, a grand jury would indict him and then, nevertheless, he could come back if he didn't appear before the grand jury and still make the district attorney go before the judge and prove probable cause for holding him and I think the grand jury....

Mr. Henry: You've exceeded your time, Mr. Roy.
Now Mr. Planchard has withdrawn his motion to withdraw the amendments. So, we are still on the discussion, then, of the amendments.

Further Discussion

Mr. Burson: Mr. Chairman, ladies and gentlemen of the convention, although we have been typecast by the roles we have played in this convention, I want to make it plain that in speaking on this amendment, I am not in any way speaking for the District Attorneys' Association, and in fact, I have at this moment personal knowledge that there are district attorneys in the state who are opposed to this amendment. But I join with Mr. Anzalone in here because I understood the purpose of his amendment to be this limited purpose. Under the present Code of Criminal Procedure before the finding of an indictment or the filing of a Bill of Information, you have an absolute right to request a preliminary examination to see if there is probable cause for holding you on a criminal charge. After the finding of an indictment or the filing of an information, Article 292 of the Louisiana Code of Criminal Procedure says that, "An order for a preliminary examination in felony cases may be granted by the court at any time either on its own motion or on request of the state or of the defendant." The intent of this amendment is not designed, and I want to make the record clear on that point, to add to or subtract from the right to a preliminary examination in any case but one, and that would be the case where the district attorney has elected to go by route of filing a Bill of Information. Under the present law the granting or denial of a preliminary examination would in that limited instance, be determined by the judge at his own discretion. This amendment, the purpose that Mr. Anzalone told me he had by putting it in was that if a defendant requested the preliminary examination in this narrow instance where he'd been charged by a Bill of Information, that he would have the right to have that preliminary examination. To get away from the argument here that only the district attorney has reviewed the evidence, and no third party such as a grand jury has reviewed it, you would have in this case to present sufficient evidence to satisfy the judge that you had a basis for holding the case over, and this is the limited basis that I understood Mr. Anzalone had in mind when he put this amendment in. I could not in any manner be for expanding it any further. On the other hand, in the case that Mr. Gravel pointed out where you have a capital crime involved, you would have the right that he referred to under the present law, and I'm not... it is certainly not the intent of the framers of this amendment to restrict

any rights that you have under the present law. It is only to expand the right of the defendant in the limited instance where he is charged by means of a Bill of Information. I'll answer any questions.

Questions

Mr. Lanier: Mr. Burson, I believe you cited the provision about preliminary examination in the Code of Criminal Procedure?

Mr. Burson: Yes, sir.

Mr. Lanier: Isn't that a statute?

Mr. Burson: Yes, sir.

Mr. Lanier: Isn't this provided for by statute under our present law?

Mr. Burson: Yes, sir.

Mr. Lanier: Do you know of the constitution of any state that has a provision like this in it?

Mr. Burson: No, I haven't researched the point, Mr. Lanier.

Mr. Lanier: Now, let me ask you this: if the judge rules in a preliminary examination that there is no probable cause, that doesn't terminate the prosecution, does it?

Mr. Burson: I don't think that's the effect under the present law.

Mr. Lanier: As a matter of fact the D.A. could still proceed with the case even though the judge ruled that there was not probable cause, isn't that true?

Mr. Burson: You don't have a final determination in the preliminary examination in the sense of a jury final determination of the charge, but I think certainly he could hold that the state has not presented enough evidence to hold the defendant over.

Mr. Lanier: Well, let me ask you this: the way that this is written you would have the preliminary examination whether he's in confinement or not though; he could be walking the street, couldn't you?

Mr. Burson: That is correct.

Mr. Lanier: ...And have a preliminary examination?

Mr. Burson: That's correct.

Mr. Lanier: Wouldn't it be true in that circumstance that all the judge could do would be to release him from bail?

Mr. Burson: Frankly, I can't at the moment think of any other reason for requesting the preliminary examination in that instance.

Mr. Lanier: Well, let me suggest one other reason, Mr. Burson. Couldn't a defendant then subpoena all of the state's witnesses and put them on the witness stand and get all of their evidence from them?

Mr. Burson: Well, of course, that's presenting the known and the state's witnesses were subpoenaed.

Mr. Burns: Mr. Burson, there seems to be some uncertainty between lawyers here in discussion of this. In other words, a person or a defendant under this amendment wouldn't have the right to an investigation by the grand jury, and then if he were indicted, come back and have the further right of a preliminary examination?

Mr. Burson: Well, sir, that was not true about that Mr. Anzalone had. That was limited to the instance

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Mr. Pugh: I think it is important to have a grand jury indictment.

Mr. Newton: Mr. Chairman, I believe what you are doing is to take the grand jury out of the picture. You know that the grand jury is the only body that can indict. If you take it out of the picture, you are taking away the right of the grand jury to indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict.

Mr. Pugh: I know that, but I don't know what your intent is.

Further Discussion

Mr. Newton: Mr. Chairman, fellow delegates, I rise in support of the amendment. I really got kind of stirred up a minute ago when the amendment was sought to be withdrawn to make some changes in it because I felt there was maybe some confusion as to what the purpose of the preliminary hearing was for. As I appreciate it, the purpose of the preliminary hearing where there has not been an indictment is to provide for a judicial review of the finding of the district attorney. In other words, where there's been a grand jury indictment, the facts have been reviewed by twelve men of the grand jury, and so there should be more of a presumption of guilt there, and I don't really want to say that "presumption of guilt" but it's to be given greater weight. Where the district attorney files a Bill of Information, he does this on his own, of course, with whatever evidence he has, and the only reason for having this preliminary hearing is to have somebody else pass on the facts as found by the district attorney as opposed to the facts as found by the grand jury. I think that it's wise to have two bites at the apple so to speak. The district attorney of course first decides to take his case to the grand jury, and they pass on the facts or else he decides to bill himself, and then the judge can pass on the fact, and I urge you to accept this amendment.

Question

Mr. Newton: Mr. Chairman, as I appreciate this amendment, I think the district attorney would have to do to avoid a preliminary examination would be to take the matter to the grand jury and get an indictment, wouldn't it?

Mr. Newton: That's absolutely right. Of course, under the present law, all he's got to do is file a Bill of Information. I think this does make a little difference.

Further Discussion

Mr. Gravel: Mr. Chairman, ladies and gentlemen of the convention, I join with the authors of this amendment in support of it, and I think it is important to have a grand jury indictment. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict.

information of what I think is a very important amendment. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict.

amendments as follows:

Amendment No. 1, on page 7, line 16, add the following: (It reads "Section 26;" you'll have to make it "28.")

"Section 28. Trial by Jury in Civil Cases
Section 28. The right to trial by jury shall not be abridged in civil cases; however, except in those instances where the right to trial by jury is guaranteed by this constitution, the legislature may provide for exceptions to this right of trial by jury."

Amendment No. 2, on page 7, at the end of line 16, add the following: (Personally, Mr. Pugh, I'd rather see that read, "On page 7, at the end of the language added by Amendment No. 1, add the following: "Determination of the facts by an impartial jury as provided by law".")

Point of Order

Mr. Pugh: Mr. Chairman, fellow delegates, I would propose that these two are severable. May I have a ruling from the Chairman whether or not they are severable.

Explanation

Mr. Pugh: Mr. Chairman, fellow delegates, I would propose that these two are severable. May I have a ruling from the Chairman whether or not they are severable. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict. I believe that the grand jury is the only body that can indict.

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assume you have no objection to having exactly what the law is today. It is my understanding that except for the provision saying, "as otherwise provided in this constitution," it's exactly like the constitution is today. As to the reason for the severability of the other amendment, I'm aware of the fact that some of my friends are interested in this amendment and some are not, and for that reason, I made the second one severable.

Questions

Mr. Lanier Mr. Pugh, am I correct in that this thing says that there is a right to a trial by jury that shan't be abridged, but unless the right is guaranteed in the constitution, the legislature can waive it. Is that right?

Mr. Pugh I'm saying my opinion of the law is that the legislature can waive a jury trial.

Mr. Lanier Under the present constitution is there a guarantee to a right to trial by jury in a civil case?

Mr. Pugh Not under the 1921 Constitution, no, sir.

Mr. Lanier Isn't this provided for in the statutory law?

Mr. Pugh You mean that there be a trial by jury? Yes.

Mr. Lanier How many times is a...have we voted on this subject of trial by jury in civil cases, do you know?

Mr. Pugh Mr. Lanier, I don't believe you've ever voted on this, and now that you mention the statutory provision, it was with some interest that I looked, just happened to fall open on the local government that you are one of the authors of, and I noticed that there are fifty-two lines in that of legislative material relating to the appointment of vacancies.

Mr. Casey Mr. Pugh, my question is somewhat repetitive of one that Mr. Lanier asked, and I just want to specifically find out, I understand this is the law today, but it's in the statutes and it's not in the constitution, is that correct?

Mr. Pugh That's correct.

Mr. Casey So you're putting into the constitution something that is not contained in today's constitution, is that correct?

Mr. Pugh That's right. I'm saying that there is a fundamental right to jury trial; I'm saying that at present it's in the statutes. I reviewed for your interest some time ago on the question of jury that four out of the fourteen states which adopted the original constitution and the amendments, required this in their Bill of Rights. I think it's appropriate that it be in the Bill of Rights.

Mr. Juneau Mr. Pugh, just as a point of clarification in case this would ever be interpreted, as I understand what you've just previously said that this in no manner whatsoever is intended in any fashion [fashion] whatsoever to authorize or destroy the right of appellate review of facts, is that right, sir?

Mr. Pugh That's absolutely correct. This amendment does not do that. It doesn't touch the appellate review. I got shot off of that horse some time ago. I think Judge Dennis is trying to get recognition.

Mr. Dennis Mr. Pugh, continuing that line of questioning, if it doesn't give appellate review of facts, what does it do, what does it do? In other words you say, I think that the trial by jury

shall not be abridged, but then you turn around and say that the legislature can do away with it.

Mr. Pugh I'm making no attempt to change the law, Judge Dennis. All I'm saying is, I think the right to a trial by jury is fundamental enough to put in the Bill of Rights. That's all. It doesn't change the law as I understand it, and I challenge any lawyer to find any change in the law in this provision.

Mr. Dennis Well, I'm just asking for information so we can make a record of what we intended by this because it worries me that we say that "there shall be no abridgment," but then we go around and say, "the legislature can create exception," it doesn't seem to me that we really accomplished anything by even putting this in the constitution.

Mr. Pugh I think the "however" resolves the problems that you're confronted with or concerned with.

Mr. Jack Bob, as you know, I am a plaintiff's attorney in damage suits. However, we've gotten along as far as I can see under the present situation, but it looks to me like the way you have this, you say the right to trial by jury shall not be abridged, and then it turns around and can make exceptions. I don't follow that. What is the magna, the exact meaning of the word "abridged"? Does that mean "repealed, can't have a jury," or just what does the word there mean?

Mr. Pugh I think the word "abridged" means that it cannot be prohibited in its entirety. When you have the exception relating to the legislature then it allows them to take it in any fashion they want to whether its adoption, anything they want to provide there will be no jury trials on, then there will be none. That's the law as it is today.

Mr. Jack One other and I'll sit down. You have the legislature already provided for jury trials in certain things like damage suits, and so forth. Now....

Further Discussion

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, I think that it's necessary that we adopt this amendment because of other actions that have been taken by the convention. It's true that under the present constitution, there is no provision with respect to jury trials in civil cases, but keep in mind that we have in this constitution, this proposed document, provided for the right to a jury trial in criminal cases. We have also provided for the right to a jury trial in some civil cases, particularly expropriation cases. Now, unless we have this provision, unless we have this provision here, it would seem to me that the legislature could very well conclude that the case cannot be and should not be a civil jury trial in any other civil jury cases except expropriation cases. Now for that reason, I think it is essential that we say something that was not said in the '21 Constitution, but that "except as otherwise guaranteed by the constitution in civil cases, the right to trial by jury shall exist subject to the legislature's right to provide for exceptions." If we don't adopt this amendment, I want to restate and I think this is important for Mr. Jack to realize, if we don't adopt this amendment, it's likely that the legislature could construe our other action ends with respect to civil cases as being a bar to any jury trial in other civil cases besides expropriation cases. I'll yield to questions.

Questions

Mr. Drew Mr. Gravel, without this amendment, can't the legislature abolish the right to a civil jury in any case that is not specified in this constitution?

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Mr. Gravel: (Interpreting) The second one.

Mr. Gravel: With all this discussion.

Mr. Gravel: Yes.

Mr. Gravel: A civil jury trial in every case except where guaranteed by the constitution?

Mr. Gravel: I think it's possible that that could

Mr. Gravel: (Interpreting) The second one.

Mr. Gravel: and I believe I've stated it as clearly as I can, is to tell the legislature by this language that we did not mean that the exclusive...that the right to a jury trial in civil cases could only be had in expropriation cases. There's a difference as I see it between the situation we're in now and the Constitution of '21 that did not provide for the right of trial by jury in any civil cases.

Mr. Drew: Isn't it a fact...one more question, Mr. Gravel...that the legislature can do anything that they are not prohibited from doing in the constitution?

Mr. Gravel: I think that's going to be the result

Mr. Drew: How could this fact that we've provided for a jury in expropriation cases be interpreted to mean we couldn't provide in other cases?

Mr. Gravel: Well, I think that that interpretation would not necessarily be unreasonable by the legislature when the legislature would take the position that there has been a preemption so to speak of the right to a jury trial in civil cases.

Mr. Kean: Mr. Gravel, how can you have a review of facts by the appellate court without abridging the right to trial by jury?

Mr. Gravel: Well, I don't think that the right to trial by jury necessarily carries with it the conclusion that the determination is the final judgment. If your thought there was correct then you couldn't reverse on questions of law.

Mr. Kean: But we don't have this provision in the present constitution?

Mr. Gravel: Sir, we do not.

Mr. Kean: Wouldn't it be fairer to say that "there shall be a right to trial by jury in civil cases" rather than to say that the "trial by jury shall not be abridged" and leave open the question as to whether or not a review on facts in the appellate court would have the effect of abridging that right.

Mr. Gravel: Mr. Kean, I think that, frankly, might be a better way to state it. I mean, just so we do have some provision in here that would protect this, that probably might be a clearer

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates, some people say, "It ought to be relegated to the statutes." Well, no, it provides for a right to trial by jury in civil cases in its constitution in its Bill of Rights. But we're going to say, "Well, it's not of constitutional stature here," even though all the other states provide it, and the federal constitution

away with trial by jury in civil cases. There's nothing to forbid that. As someone has said, "Well, now isn't that all this provision does?" Couldn't trial by jury in civil cases be done away with this provision? No, exceptions can be made. Cannot be done away with. That's all this

summary proceedings, quo warranto, things of that nature, but if laws were attempted to be passed by the legislature saying for example that in cases in

in a civil suit, that it could be done in those instances, I think this protection those because this only allow the abridgment of the right. This is particularly important. The fact an administrative body should be Administrative bodies make rules, those rules, and they do not conform in general the rules of evidence. Yet, under present law the determination of facts which the administrative bodies make is binding and not subject to review by the courts. That doesn't make sense. We have review of facts as determined by a district court in the court of appeal; we should certainly have review of facts by the courts of an administrative agency decision. That's only logical, so I urge the adoption of these amendments.

Point of Order

Mr. Denberry: The second amendment which was just discussed by Mr. Jenkins was previously brought before this convention separately in Section 8, and was defeated and deleted from Section 8 on the forty-first day's proceedings, September 5, 1973, page 4 of the Journal. Is it not then out of order for it to be brought again?

Ruling of the Chair

Mr. Denberry: Thank you, sir.

Point of Order

Mr. Jenkins: To Inquire, Mr. Chairman, was the phrase "as provided by law" in the first amendment that first one. I think that makes quite a difference.

Mr. Henry: We'll check right quick-like.

that sentence reads: "determination of facts by an administrative body shall be subject to review, implicit in that is 'in accordance with law.' So I see no difference....

Mr. Henry: I think the point is well taken, and I think it is out of order, Mr. Jenkins, to proceed.

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specifically applicable in juvenile cases which would ordinarily be applicable in criminal cases, but I don't know if that necessarily raises juvenile cases to the status of criminal cases. Now in case you don't know it we don't have a right to trial by jury in juvenile cases, and all of your various district courts sitting as juvenile courts throughout this state in my opinion are sitting as civil courts, not as criminal courts. Now if we're going to permit juvenile defendants the right to demand a trial by jury, it seems to me that we're providing for substantial problems in the administration of juvenile justice that we have to consider very carefully before we grant that right in this constitution. So I urge you to give due consideration to that very serious question in voting on this amendment, and until it is specifically provided for in the amendment, I would have to urge its rejection.

Questions

Mr. Weiss Are you saying that in a divorce case there'd be a right to trial by jury possibly according to this amendment?

Mr. Derbes No, I mean that's not it at all, Dr. Weiss. I'm talking about juvenile cases, Dr. Weiss. Juvenile cases where a juvenile is charged with a violation of state law and a proceeding is brought by the State of Louisiana in the interest of the juvenile. Now this constitutes a very substantial amount of the justice system in this state, the area of juvenile justice. Not too many people know about it. Proceedings are essentially of a confidential nature, and people don't really know too much about it in this state, but the juvenile when he appears in court is entitled to a trial; he's entitled to counsel; he's entitled to a right against self-incrimination, but he's not entitled to a jury trial, and I suggest to you that if we are going to provide for a right of jury trial in juvenile cases, we'd better be very certain how we do that. It seems to me that inasmuch as a juvenile proceeding could very legitimately be considered a civil proceeding that what the first sentence here does or the first clause here does is it announces an unabridgable right of the juvenile to a jury trial. Now if that's what you want, you vote for this, but if you've got any substantial doubts about that, I trust you'll vote against it.

Mr. Weiss But isn't a divorce case a civil proceeding?

Mr. Derbes Yes, a divorce case...

Mr. Weiss Well, therefore, this amendment would require in some instances a jury trial if you care to have it.

Mr. Derbes In addition to my remarks about juvenile cases, you are correct.

Further Discussion

Mr. Jack Mr. Chairman, ladies and gentlemen, it looks like football this weekend is making us work. We can't thank athletics for this.

I'm concerned about if this amendment passes.

Mr. Chairman, see if you can get me a little order. I can't hear myself and I don't want to make any of this.

Mr. Henry Give the gentleman your attention.

Mr. Jack Now, look if you all don't want to listen, don't deprive me, if you will, please.

Now, we've existed since the '21 Constitution without anything in the constitution about these civil juries and damage suits and other things. I've tried plenty. I'm a damage suit lawyer. But I am concerned about this Number 1, and I've understood it, it says "the legislature may provide for exceptions to this right of trial by jury." The legislature has already provided. As I gather,

they would have to provide again. It would open that whole field. I know what the exceptions are now. Another thing, it's well known that you have civil juries. It's in the legislative law. Now, here's an interesting thing. I've looked and asked a number of lawyers. You look through the present constitution, you look through what we've finished, Bill of Rights, and you look through Judiciary...I don't find and these lawyers don't find where it says who sits up there and tries a case. Everybody presumes, the fact that a judge is elected to the district court he's going to try them and that the statute says that and that the statute provides for civil juries, then that's who tries them. But it does not actually state in the constitution that a district judge tries them or any other judge tries them. Now, I'm glad that Mr. Derbes and I see eye to eye on something. We're good friends, but a lot of times we differ. This juvenile court is a serious thing as to whether those are civil cases or whether they are criminal. I'm sure they have plenty of cases in juvenile court in New Orleans than they do up my way. I'm not so sure that they can be classified as criminal. If they are classified as civil, I'd hate to ever see the doorway opened that all those cases...little old non-support, neglect, all those...could be tried as civil cases. I don't see the necessity of this being in the constitution. I have no fear of the legislature taking away the right to civil trial by jury in the damage suits and the other things. They had taken it away, if it ever existed anyway; they didn't allow it in the appropriations. That was a different matter entirely. So I reluctantly, I hate to go against my friend and my Caddo representative here, Mr. Pugh. Bob's a good friend, but I just can't agree on it.

Thank you all for quieting down so I could listen to what I was saying. Thank you.

[Previous Question ordered.]

Closing

Mr. Pugh Mr. Chairman and fellow delegates...

Fellow delegates, in response to Mr. Derbes and so many of you who have no question about it, I have written two hooks on the subject of juvenile laws in Louisiana...two of them. Let me assure you that you can't have a trial by jury, by existing statute in the juvenile court. I have also drafted all of the juvenile laws in the State of Louisiana relating to all of that work. It is a matter concerning which I have some knowledge. I would not want you to think for a minute that I would propose for your consideration an amendment which would do these horrible things in juvenile court. If you take nothing away from me, I assure you this juvenile matter is one I do have some knowledge over. Getting to the basic question, I tell you, I tried to tell you in a memorandum, every state provides for a trial by jury. Louisiana has a trial by jury. This is nothing to do with appellate review of the facts. All it does is the same thing that we thought was good enough to do by one of the Bill of Rights insofar as the United States Constitution is concerned. I'm not misleading you. It's not by nature, every state this amendment, you will do one thing and one thing only. You'll put in the Bill of Rights a fact that's fundamental, that we'll always have and always have had. In any instances where the legislature wants to take away that right to a jury they can do it, and the United States Supreme Court has said they can do it. I'll tell you something else. The United States Supreme Court has also said you don't have to have jury trials in juvenile matters.

I yield to questions.

Questions

Mr. Derbes Mr. Pugh, I defer to your greater expertise, and in that light would you please tell me whether or not a juvenile case is considered a civil case or a criminal case or what?

Mr. [redacted] is a newly settled State Taxman (and a
tax collector) and is very friendly.

Mr. Pugh Absolutely. It could be a civil case.

Mr. Pugh And they have done that in the juvenile matters. That's what I said. They've already done that.

Mr. [redacted] ir. When the constitution which purportedly gives them that right specifically says "the legislature can take it away from them." They've already taken it away from them.

Mr. Pugh For your information I drafted the amendment by which that jurisdiction was to be given there that you make reference to. The point

Mr. Derbes It says "the legislature can provide that there won't be jury trials only where the right to trial by jury is guaranteed by the constitution." What about those instances where the right to trial by jury is not guaranteed by the constitution? Then the legislature can't provide for abridgement of that right to a trial by jury. Isn't that the clear reading from this?

Mr. Henry You've exceeded your time, sir.

gether, there's a difference, Mr. Denney.

want to discuss it further or there are those people who do, that we would allow further debate on this, although it's been debated throughout the convention...the concept and the idea. But the previous question has been ordered.

Mr. Perez Point of Information. As I would understand it even with the division of the question, in each case it must get sixty-seven votes in order to pass because it is a new section. Is that correct?

Mr. Perez, then at least would require an affirmative statement.

All right. We'll vote on Amendment No

Mr. Henry The second one now is out of order, Mr. Pugh, because the first one was defeated.

Mr. Poynter Amendment No. 1 [by Mr. Grave:],
page 7, line 16 add the following:

by jury in civil cases. Except where the right to trial by jury is guaranteed by this constitution, however, the legislature may provide for exceptions to this right."

Amendment No. 2, at the end of the language (and I've changed that Mr. Gravel to fit in) added by Floor Amendment No. 1 hereof add the following: "Determination of facts by an administrative body, or by the jury shall be subject to review."

Mr. Gravel: Mr. Chairman, ladies and gentlemen of the convention, what this amendment will do is to take care of the objection that I think Mr. Keane had to the proposal that Mr. and I had previously. Also to take care of objection that one had with respect to the possibility that appellate review of facts might be prejudiced by the proposal. Section 26 would read simply that "there shall be a right to a jury trial in all cases where a jury is not eliminated. Amendment No. 2 provides clearly, specifically, that the "determination of facts shall be by a jury in all cases where a jury is not eliminated."

[illegible]

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rejected: 55-52. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegates Warren, Jack, Velazquez and Rayburn.

Amendment No. 1, page 7 between lines 3 and 4 insert the following:

"Section 22.1. Right to Compensation

Section 22.1. The legislature shall provide a method for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction."

Point of Order

Mr. Arnette Mr. Chairman, are these amendments in order or have we voted on this before?

Ruling of the Chair

Mr. Henry Mr. Arnette, we have this amendment and three more that are substantially the same. They are all on this business of compensation. Now, I'm not going to rule that they are out of order. I will let this body determine that, because on Mason's Manual-----the book says that the presiding officer should never rule an amendment out of order unless he is certain that it is. In case of doubt he should entertain the amendment subject to the right of a member to rise to a point of order, or he should submit to the House the question of whether the amendment is in order or not. I'll ask that the Clerk read the amendments that are coming right behind this. I don't think that will be necessary to do that....

Mr. Arnette, I'm not going to rule that they are out of order. If you want to let the House make the motion, we'll let this body determine it.

Motion

Mr. Arnette Well, let's just let the House decide then, because I don't know, I think we've voted on it before. I've got nothing against compensation....I think it would be good for the legislature....

[Amendment reread.]

Mr. Henry Mr. Arnette has moved that the convention determine these amendments to be out of order. His motion being based on the fact that it is his understanding and belief that the convention has considered this same subject matter heretofore.

Point of Information

Mr. Chatelain Mr. Chairman, I would like to get a ruling if you could from the author. Is this identical to the one we voted on? If it is....

Mr. Henry Now, that's exactly what we're talking about. I'm going to let the convention determine. I'm not sure that it's identical to it. So we'll let the delegates decide.

I therefore, when the machine is opened, as many of you as are in favor of considering the amendments...I'm going to ask the Clerk to read them again.

Why do you rise, Mr. Jack?

State your point.

Point of Order

Mr. Jack Mr. Chairman, I cannot remember, and I've picked up amendments whether they're yesterday's or today's. I'm a honest person, and I can't vote on this unless I have the Clerk by comparison read yesterday and today's. Because they may be word for word; I don't know. I don't want to cast any doubt on my veracity. The clerk can compare the one we had yesterday...I'm a coauthor...and then he can compare it with the one now. Let us know.

Mr. Henry Read the amendments from yesterday, Mr. Clerk.

Mr. Poynter I can see right off the words "a method" was not in the amendments submitted by Mrs. Warren....

Mr. Henry The point being, Mr. Jack, and I think that Mr. Arnette is raising, that while this amendment may not be worded exactly as the amendments we considered yesterday, he's saying that for all practical purposes we considered the same thing. This is not debatable, Mr. Jack.

Mr. Jack I'm asking a point of order.

Mr. Henry State your point, sir.

Mr. Jack I think you've answered it, because I just don't want to so-called perjure myself. Now if it's different, I want to vote to hear it again, because I'm for it. I'm still for it.

Mr. Henry Why do you rise, Mr. Conroy?

Mr. Conroy You had begun to explain how the vote would go. I was a little bit confused. You had suggested that a vote in favor would be a vote to consider it or a vote in favor of the motion? I was confused as to which way the affirmative vote would go on this.

[Amendment reread. Same vote of 47-59 the convention declared amendment out of order.]

Personal Privilege

Mrs. Warren Mr. Chairman and fellow delegates, I accept the decision that you have made. The only reason that I came back with this amendment, Mr. Rayburn had an amendment to the amendment, or to the section that was going to be created, and "a method" was added into it. However, I am sorry that so many people at this convention decided that they would not like to see innocent people given a chance to get compensations for serving time that they were not doing, serving time to serve. I would like to remind you of a political ruler who once sent out a decree that every male child should be killed in his city. In sending it out he found that his own child was killed by his own decision. So I leave it up to you. Thank you.

I am not going to withdraw any other amendments. I have not taken up near as much time on any amendments as anybody else here had done; so let it all come out. I will since I'm back here...some said they didn't know what I was getting to. Some day you might find yourself in the same situation that the great ruler found when he sent out the decree for his own son to be killed. You may find yourselves in the same spot, serving time for things that you did not do and wish you had compensation that it would be provided in your constitution.

Amendments

Mr. Poynter The next set of amendments are also offered by Delegates Warren and Jack concerning the right to compensation. Distribution copies of this set have not arrived.

Amendment No. 1, on page 7 between lines 3 and 4 insert the following:

"Section 22.1. Right to Compensation

Section 22.1. The legislature shall provide for adequate compensation for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided the person did not by perjury contribute to his own conviction."

Point of Order

Mr. Smith We've taken this up before too. I'd like to make the same motion Mr. Arnette made. This is the same thing we had....

Mr. Henry I can rule on this one because I've advised by the Clerk that these are identical to amendments that we considered....same amendments that were decided yesterday.

Mrs. Warren, this set of amendments is out of order because the same set of amendments were voted on yesterday.

Mrs. Warren Mr. Chairman, you're looking at the amendments. I'm not. I only have these in my head. I said if anyone else had the same idea, I supported their amendment. Now, I don't have the amendment before this.

Mr. Henry Those are out of order; so call the next set, Mr. Clerk.

Mr. Velazquez, do you want either set of yours? Why do you rise, Mr. Thompson?

Motion

Mr. Thompson Mr. Chairman, all we've done for the last hour is argue whether amendments are germane or what not; so I'm rising to make a motion that we vote on the entire subject matter.

Mr. L Mr. Richard Thompson now moves the question on the entire subject matter. Mr. Clerk, there are other amendments. Is that correct?

Mr. Poynter Delegate Velazquez has a set of amendments. He has just withdrawn the second one. Delegate Kilbourne still has a set of amendments here.

Motion

Mr. Kilbourne Mr. Chairman, I wish to move to suspend the rules in order that Section 12 can be called from the table and be reconsidered, particularly the language that puts Miranda v. Arizona in the constitution.

Mr. Henry Mr. Kilbourne, your motion would be out of order, because yours is to suspend the rules and Mr. Thompson's is a privileged motion of the previous question on the entire subject matter. So we'll have to dispose of his motion first.

There are two sets of amendments, and we don't have a list because we're not on final passage.

Mr. Perez, why do you rise, sir?

Point of Information

Mr. L Point of Information. The entire subject matter... what?

Mr. Henry The entire subject matter being the proposal by the Committee on the Bill of Rights. If you vote yes on the motion, then you shut off debate, any further debate, on this proposal, and we would then allow some debate...there would be no more debate, period. Whoever wants to has the right to close.

Why do you rise, Mr. Avant?

Mr. Avant Would I be in order to request that the Clerk read the two amendments that are still on the floor?

Mr. Henry Yes, sir. I think that would be. Mrs. Zervigon, why do you rise?

Mr. Zervigon Mr. Chairman, I have some amendments. I know that we could still vote on these amendments, but that we couldn't debate them.

Mr. L I have no further debate. (Mr. Zervigon) I have no further debate.

PROPOSED AMENDMENTS

offered by Delegate Velazquez.

The legislature shall provide adequate compensation for victims of felonies and for persons

are proven subsequently not to have committed provided that such person did not by perjury contribute to his own conviction.

The Kilbourne amendment which he indicated would have to be preceded by another motion to get back to that point.

Amendment No. 1, on page 4, line 12 after the words "Section 12", delete Amendment No. 2 proposed by Delegate Derbes and adopted by the convention on September 7.

Mr. Poynter A set of amendments offered by Delegate Velazquez as follows:

Amendment No. 1, on page 7 between lines 3 and 4, insert the following: "Section 22.1. Right of Victims of Compensation Section 22.1. The legislature shall provide adequate compensation for victims of felonies and for persons convicted and imprisoned for crimes which they are proven subsequently not to have committed provided that such person did not by perjury contribute to his own conviction."

Point of Order

Mr. Thompson As I've previously state, we have already discussed this, Mr. Chairman. I would like to ask you to rule if this is not just repetition of what we've already once discussed.

Mr. Henry Mr. Thompson, on the basis of my last determination, I cannot say that this is an identical amendment. We will put it to a vote of the delegates.

The amendment has not been passed out?

All right, let's let....

Why do you rise, Reverend Stovall?

Point of Order

Mr. Stovall Point of order, Mr. Chairman.

The delegate did not ask for a ruling from the body. He simply asked you for your interpretation.

Mr. Henry Yes, sir, Mr....I realize that and I say that I can't tell that it's out of order myself because I'm not certain, Reverend Stovall, that it is the identical amendment that has been already considered.

Therefore, I will let the delegates determine where it is. And that's the proper ruling. And that's according to Mason's Manual.

Therefore, when the machine is opened....

Mr. Perez, I'm sorry, why do you rise, sir?

Mr. L I have no further debate.

Mr. Henry No, sir, it's not debatable.

Mr. L I have no further debate.

I see you, Mr. Jack....

All right, Mr. Jack.

Mr. Jack Mr. Chairman, that rule book I found the name of it, allows you to put it up there only where there is doubt in your mind.

Mr. L I have no further debate. (Mr. Jack) I have no further debate.

Mr. L I have no further debate. (Mr. Jack) I have no further debate.

Mr. L I have no further debate. (Mr. Jack) I have no further debate.

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Mr. Henry Mr. Jack, our rules provide that the chairman may call for a sense of the convention. Now I'm not going to stand up here personally and rule an amendment out of order unless I'm absolutely certain, as I was on the amendment that we had here a while ago, that we had considered one of the identical wording of that on yesterday, don't you see? I'm not going to say that this amendment has or has not been considered because I don't know, in my own mind that it has or that it has not. We'll let the delegates determine, and that's a fair ruling under the rules.

Mr. Jack Well, let me ask you this. I'm looking at all of them, and I don't see "felonies" but in this one. Can I be heard and read it?

Mr. Henry He's already read the amendment and we'll read it again, sir.

Mr. Jack Well, alright, the others don't have "felonies" in it. Can he read them so they can understand? I don't want this group voting on something they don't understand.

Motion

Mr. Velazquez Mr. Chairman, in the...in trying to save some time and to try to get this issue really before the people, I've had a talk with Representative **Alphonse Jackson**, the Chairman of the Committee on the Bill of Rights, and he has told...given me his solemn word that he will introduce legislation to this effect in the next session of the Louisiana Legislature and bring this thing before all the people and before all the elected representatives of the people. And in light of that commitment from Representative **Alphonse Jackson**, I request permission to withdraw my amendment.

[Amendment withdrawn.]

Mr. Poynter Mr. Chairman, the next set of amendments would affect an amendment to Section 12 which has heretofore, of course, been adopted. A motion to reconsider has been tabled. Therefore, its consideration would have to be preceded by another motion.

Motion

Mr. Kilbourne Mr. Chairman, I move to suspend the rules for the purpose of removing Section 12 from the table and to reconsider Section 12, specifically for the purpose of removing the first sentence as set forth in the amendment.

Mr. Henry The gentlemen now moves for suspension of the rules for the purpose of removing the vote or calling from the table the motion to reconsider on Section 12. The motion is not debatable.
Mr. Casey

Point of Information

Mr. Casey Could the Clerk read the sentence that the suspension of the rules is directed at so we'll know what we're removing?

Mr. Henry I think your point is well taken.

Amendment

Mr. Poynter Mr. Casey, the amendment that would be proposed at this time, of course it would be open to any amendments, but Mr. Kilbourne presently does have an amendment, the effect of which would be to delete the previously adopted Derbes' amendment which was adopted on September 12. That amendment by Delegate **Derbes** took out of the committee proposed the first sentence of Section 12 as you have it before you.

On page 4, lines 12 through 14, the sentence at that time in the proposal read, "When a person has right to be detained, he shall immediately be advised of his legal rights and the reasons for

his detention.

The **Derbes'** amendment adopted on September 2 deleted that sentence and inserted the following: "When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to assistance of counsel, and to court-appointed counsel if indigent."

Point of Information

Mr. Rayburn Mr. Chairman, I merely wanted to know why Mr. Kilbourne wanted to suspend the rules to reconsider this particular provision.

Mr. Henry The Clerk was just reading...there is some language that was deleted. I think that he wants....

Mr. Rayburn He read the **Derbes'** language, but I wonder why...Mr. Kilbourne...what language he has? I would like to know that, Mr. Chairman.

Mr. Henry All right. Read it again, Mr. Clerk.

Mr. Poynter Mr. Rayburn, the effect of that amendment would be to wipe out the **Derbes'** amendment, as I appreciate it, and to restore the Section 12 as it was originally drafted before you, sir.

Isn't that correct, Mr. Kilbourne?

Or just to delete it, period, and leave the first sentence out altogether.

That's what you want to do? All right.

He wants to wipe out the **Derbes'** amendment and leave as deleted, the first sentence.

Point of Order

Mr. Avant Point of order.

As I understand the rules, if we suspend the rules with respect to this particular amendment, then the floor is open for any and all other amendments to that particular section that anyone may choose to offer.

[...suspension of rules to suspend the rules to reconsider section 12...44-44...
...proposed amendment...]

Closing

Mr. A. Jackson To be very brief, I simply want to express the appreciation of the Committee on Bill of Rights and Elections for all of the work done by the members of this convention in making the Declaration of Rights Article a good article that I believe will redound to the benefit of all Louisianians. I know that it's been tough and hard. We expected this because we were dealing with some of the real out issues affecting the rights of individuals. For the last half day, you have been considering amendments that were not authored by this committee. But, we thought that in the interest of everyone receiving full attention to their concerns, that we would not raise objections. We simply wanted to say to you that we appreciate the hard work done by members of this convention in making the Declaration of Rights Article an article that we think will extend freedom and will provide a glowing edge of dignity and freedom for all Louisianians. I urge the adoption of this Rights Article for the people of this state.

[Proposal passed: 88-28.]

Personal Privilege

Mr. Rayburn Mr. Chairman and fellow delegates, I would like to suggest that we ask someone in authority to try to schedule some time for committee meetings. Revenue, Finance and Taxation have met consistently for the past several months.

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and I'm going to be here next Tuesday, as I said. And I don't...it doesn't make any difference. I'd just as soon work every day in the week. My check is the same. I don't get...I did not accept the fifty dollars a day. I got a better deal year before last, I guess.

And so far as committees having time, there is Sunday, Monday and Tuesday available for committee meetings, and I don't think it's necessary to go that route. But, I think there is ample time for committee hearings if we use the time which we have wisely. I hope that perhaps after next week we might be able to come in at twelve or one maybe one or two days, and allow committees to meet in the morning because, gentlemen, I do realize, and ladies, that this is a problem. But I'm having a problem because some people can't meet this day and some people can't do that. And I realize that if tomorrow weren't a football game day, that everybody would be dying to go home, too, and that's fine, because I'm going to be here.

But please understand, please understand that I'm doing the best I can and I'm not trying to frustrate any one of you out there. And I know my temper gets short up here, occasionally, maybe a little too frequently, and for this, I do apologize. You've got a difficult job, and I've got a difficult job. But I say again, and again, and again, I asked for, and you asked for it. And I'm not going to turn it loose, and I hope to God you don't because this is the one chance we've got to do something for the people of this state. I think most of you, if not all of you, are sincere. I assure you that I am, and if I've hurt your feelings, I beg your pardon, and I apologize. You've been short with me at times, and I've been short with you, and we're going to have to dance for four more months. But I'll be just as nice as my patience will allow me to be, and I hope that you understand what I'm talking about.

[Adjournment to 9:00 P.M.,
Saturday, September 15, 1973.]

ROLL CALL

Mr. Burns Let

Our Heavenly Father, we ask Thy continued direction as we proceed to draft this new constitution. We ask that Thou would speed up our work, Lord, in that when we desire to get up and speak after two or three delegates have already spoken on the same subject that Thou would keep us in our seats, and that Thou would stay our hands when we have a desire to offer amendments when there have been several offered on the same subject matter. We thank Thee for Thy protection as we go to our homes after we finish the day's work. We ask all these things in Jesus' name and for His sake. Amen.

ALL BUSINESS

READING AND ADOPTION OF THE JOURNAL

RESOLUTIONS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Resolution No. 11, introduced by Delegate LeBreton, Chairman on behalf of the Committee on Legislative Liaison and Transitional Measures, Delegate Henry, Chairman on behalf of the Coordinating Committee.

A resolution to recommend categories for the orderly transition of material from the Louisiana Constitution of 1921.

This resolution had been previously reported favorably by the Committee on August 30, and engrossed and passed to third reading on the thirty-first. So, the copy as printed originally will be the correct copy and I think that's on blue stock paper.

Explanation

Ms. Zervigon Mr. Chairman and delegates, I think in order to understand what the Committee on Legislative Liaison is trying to accomplish with this resolution... You need think to yourself that it's moving day. That for each room in the new house you have a box. As you decide what's going to go in that room, you put the articles in that box. You have one for the living room, one for the dining room, one for the bedroom and one for the attic. What this resolution attempts to do is to set up for the substantive committees what sorts of boxes are available in order to move things from the old constitution into the new constitution or into statutory law. It doesn't mean that every single box has to be used. If on moving day you find you have nothing that really belongs in the attic you're going to give it all away or sell it in a garage sale. You fold up the box marked "attic" and you don't use it. So, this sets up various categories in order to ease the transition into the new constitution, and in order to make sure that we have a uniform system, that we refer to different sources of statutory material where each one of us knows what the other is talking about. The committee has proposed five categories. The first of the articles and sections of the new constitution, which is the material we're considering and passing at this point on the floor. The second would be provisions of the 1921 Constitution which are statutory but would be subject to change only by a super-majority. This is what we've talked about among ourselves as the two-thirds category of the legislature to change anything. It could be three-quarters but it's more than fifty percent. Anything you want very much protected that is not mentioned in the constitution as needing a two-thirds vote of the legislature to change, you could move

... a two-thirds vote of the legislature to change it. The third is the ordinary statutory material. I think there's a lot of it. Pat Juneau was telling you the other day how many words we had eliminated. Not all of that is trash; a lot of it is very good

require new legislation to implement them. Not every useful for some who've made some basic changes in our law in the provisions that we've passed. The fifth is material which is obsolete or unnecessary. Are

ate Zervigon

A resolution to amend Rule 78 of the Standing Rules of the Convention to provide that delegates not voting, rather than absentees, shall be listed separately.

This resolution was reported favorably on September 13, and ordered engrossed and passed to its third reading on a rules suspension that day. So the blue copy is the correct copy. It's 39.

Well, it may not be a blue copy. This is a Delegate Resolution; they're brown or something, I think. It's a pink...

Explanation

Ms. Zervigon O.K. It's really a rather simple change, and if you'll look up here I'll show you what I'm doing or proposing to do with this rule change. On a roll call, the first thing in the morning, the delegates' names are listed as "present" or "absent" in the Journal. On a roll call vote, after that, the delegates' names are listed as "yeas", "nays" or "absent". There are all kinds of reasons to be not voting other than being absent. When I asked the Clerk if he could change the word "absent" to "not voting" he said that it was required in the rules that the names be listed on a separate list under the word "absent". This is merely to allow the change in the Journal of this word "absent" in the third category of delegates. So that you won't be recorded absent when you're present or for some reason or other don't feel that you can vote on this issue or you were out of the room for a second or you were in the phone booth or something like that and I ask your adoption of this amendment.

Questions

Ms. Brown Ms. Zervigon, you want to place in the category of absent, altogether, is that correct?

Ms. Zervigon Only on roll call votes. Not on the original present and absent category in the Journal.

Mr. Brown In other words, on the first page it would show absent on the first vote, but from then on out, throughout the rest of the day, it would merely show you as not voting, even if you were originally absent, is that right?

Ms. Zervigon Yes, and the reason for that is that it's very difficult to tell... it would be very difficult to set it up into four categories... "yeas", "nays", "absent", and then "not voting". It would do it but the Executive Committee had decided originally not to buy the kind of voting machine that would make it easy, and just let you vote abstention. They were a little afraid abstention might be a lot of the time. I think that on some of the morning

Mr. Brown So, just to ask you one more time then, after the first roll call vote from then on out, it would merely show not voting, even if you were absent and had not been there the whole day, you'd just be listed as not voting, is that correct?

Ms. Zervigon Yes, that's how it would be. If you're in Shreveport and you're absent, you're not voting, but if you're here, you're not absent, even though you may not be voting.

ORDER OF BUSINESS

Mr. Chairman Resolutions on amendments to the Louisiana Constitution, to be taken up and voted on.

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would be to the convention to do this. "Minimal?"

Mr. Henry There wouldn't be any added cost, Mr. Tobias.

Questions

Mr. Champagne I think you answered it, but it's "yeas," "nays" and "not voting," right?

Ms. Zervigon Yes, sir, rather than "absent." It's to change that one word in the Journal...to allow that word to be changed.

Mr. Warren I'm still...I'm a little bit puzzled. Do you mean...I'm for your amendment...but, do you mean, since the question came up, a person could come in, answer roll call, disappear, and he's present all day?

Ms. Zervigon No, ma'am, it doesn't say that. It just says that he's not voting, as it shows on the tally sheet that comes out of the voting machine. Not voting...it doesn't say why he's not voting. On the other hand at present, if an issue comes up that you don't feel sufficiently informed to vote intelligently on, you are recorded as absent, even though you may be sitting in your chair the whole time.

Mr. Warren I can understand that too, and at the same time I can be sitting in my chair and recorded absent and in the next two or three minutes something comes up and I feel adequate to vote on it and I'm recorded present. In this amendment you can come in here and push that button and you can be absent all day, but you'd just be recorded as not voting.

Ms. Zervigon That's right, and no reason for your not voting would be shown. Now, a reason is shown that is not accurate for all the people that are not voting on one issue or another.

Mr. Stinson Do you know that they have a course at L.S.U. on Convention '73, and do you know that they have been checking our Journal and the comments have been made, "Look, there are a lot of people that are absent and should be there at their desk listening and tending to their affairs, and this will correct that impression, won't it?"

Ms. Zervigon No, sir, I didn't know that, but I believe it will.

Mr. Stinson They've especially been calling attention to the fact to how many are absent and not being here attending to the business.

Ms. Zervigon I appreciate you bringing that up, Mr. Stinson.

Mr. O'Neill Mary, have you checked with the staff to see if this is going to be any more trouble?

Mr. Henry Don't worry, the staff will cheerfully do it. Don't worry about the staff. They don't have much to do anyway.

Mr. Chatelain Mary, I've got a problem trying to analyze this. For instance, last week I had to go to Lafayette to make a talk. I was gone for three hours, and I thought it was more important than being here. Of course, while I was gone I was reported absent. Wouldn't this encourage some of us to leave for two or three hours at a time and, perhaps, just be away? I'm concerned about this.

Mr. Zervigon Mr. Chatelain, it's my opinion that being listed as absent on a roll call vote in the Journal is not really a deterrent to somebody who feels he really must go carry on his business someplace else. All I'm trying to do is make the Journal read a little bit more accurately, that's all.

Mr. Chatelain Well, you don't think it would

encourage absenteeism, then? So far as voting,

O.K., number two, this couldn't be in any way construed as a yellow light. If you don't want to vote on an issue...a real hot issue...and you wanted to not vote at all, this wouldn't encourage this kind of operation?

Ms. Zervigon I wouldn't think so, Mr. Chatelain. I believe most of us would like to be known as people who can make up their own minds on an issue.

Mr. Chatelain I appreciate that, and thank you.

Mr. Brown Ms. Zervigon, I'm for your amendment. I think it's good. You might want to consider adding a separate category, "absent press." If you look around right now, except for the Associated Press and Mr. Gillis of the Times-Picayune, they're all absent today, and the press is screaming and hollering about us not showing up. Well, I think that it's a real reflection, the fact that not a bit of the press is here today. We might want to put "absent press" since none of them bothered to show up this morning.

Ms. Zervigon Just one thing on that point, the Times-Picayune is here, and the Associated Press is here, but everybody else is gone.

Mr. Flory Mrs. Zervigon, I find no fault with the resolution, but I need a clarification. Suppose we had a quorum call for the record just prior to a record vote and it was a very important matter. How would a person be listed on the record quorum call; would he be listed as absent or would he just be listed as not voting?

Ms. Zervigon If it were in the record?

Mr. Flory For a quorum call.

Ms. Zervigon It would be listed "absent" and "present" as it is on the original roll call. This only applies to a vote on which there is a split of "yeas" and "nays." The third category is people who are not voting for one reason or another.

Mr. Flory Let me be sure I understand what you say, then. If we had, during the middle of the day, a record vote ordered on a very controversial issue, someone called for a quorum call, for a record quorum call, I want to know on that record quorum call, would a person be listed as absent at that time which he may actually be absent, or would he just be listed as not voting on a quorum call?

Ms. Zervigon This only changes the rules as it applies to a record vote. It has no effect on quorum calls or roll calls.

Further Discussion

Mr. Asseff Mr. Chairman, delegates, I object to the resolution. I do not think the way it is stated that it will accomplish much and will cause much confusion. I would have no objection if we added a new category and stated "not absent", then the next category "not voting," so that if a delegate wished to indicate that he was present and not voting for any reason...that is up to him...he could so indicate. But, I do feel that if you are absent it should be recorded as such, and it could cause a great deal of confusion when we have record votes. I feel that it would encourage absenteeism. I don't see why we can't say "yeas", "nays", "absent" or "not voting" and in that way the delegate could be recorded. I object to this.

Questions

Mr. Willis Dr. Asseff, I understand that these...that there can only be three categories and that you are trying to infuse another one, notably, you can vote "yes" or "no" so that what you're doing is supposing that we can have a fourth category,

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Mr. Willis. I am not voting on this, Mr. Willis, saying if you're absent, you're absent. If we put you here and for some reason, which is your decision, you choose not to vote. On the other hand, if you are absent, regardless of whether you have a reason or not---if you have a reason, you get the consent of the Chair---so I feel that if you're absent, you're absent and it should be recorded. If you're here and do not wish to vote, then that is your decision, but I do not want to lump them together.

Mr. Willis. Well, that is where, Doctor, you lose me. You can either be for or against, by the buttons. Now, if you don't press the buttons, then you're something. Now, you want a fourth one.

Mr. Asseff. I don't want anything. I want to do it properly. What I am saying is this, suppose that we have a quorum call. Suppose that it's a record vote. The individual is here, it is one thing; if he is absent, it is an entirely different thing. He can be here and be counted for a quorum call if he doesn't open his mouth, but if he's absent, he cannot be. I feel that if we don't make that distinction, we're causing confusion.

Mr. Stinson. Doctor, you understand from that that each quorum call they take, if you're not here, that it would be "absent", not voting would show "absent"...you understood that, didn't you?

Mr. Asseff. But, we may go throughout, in a number of votes, a number of record votes, and we have no way of knowing who is absent. I think that would discourage those who are making every effort to be here.

Mr. Stinson. Not when you call a quorum call. Thirty minutes, and if you don't show up, that would show it as absent.

Mr. Asseff. I don't think we've had any quorum calls that often, and I could leave right after quorum call.

Mr. Stinson. Wouldn't you say that if you're not here, that it would show it as absent?

Mr. Asseff. No, I don't think so. I think it's immaterial, because, if you want me to answer, a lot of people press the button on a quorum call for somebody else. I just feel that on the issues you ought to say "yes", "no" and if we're going to take it that far, "absent" or "not voting". Otherwise, we cause confusion and I feel those of us that are here will not get credit for being here. Thank you, Mr. Chairman.

Mr. Velazquez. Dr. Asseff, wouldn't this lead to somebody's buddy pushing his button in the morning when he's not here and he never shows up all day and there would still be no way to know whether he was really here or not? That the record would show that he was not voting and he obviously wouldn't be here all day and there would be no way for the convention to know the man was not here all day, because his friend would do him a favor and push the button the first thing in the morning on the initial roll call?

Mr. Asseff. I have no objections to the not voting. I have no objections to the not voting. If he is here and not voting and it would be recorded, I would have no objections to that. That's easy enough for him to send a note to the Chair and say "I am here and not voting" and sign his name. That would solve the problem and

substantive.

Section No. 40, by Delegate Casey.

A resolution to amend and readopt Paragraph of Rule 50 of the Standing Rules of the Convention to require that the recommendations of the Committee on Style and Drafting on proposals adopted be submitted to the substantive committee involved prior to report to the convention.

This is reported favorably on the thirty-first and engrossed under a rules suspension on the same...on September 13, rather. It should be in the pink copies.

Explanation

Mr. Casey. Mr. Chairman, the Committee on Style and Drafting is the...that area of the rules affecting the work of Style and Drafting. It merely adds one paragraph to the paragraph on Style and Drafting affecting their duties and merely indicates that after Style and Drafting has completed its work...that their work...be submitted to the substantive committee which considered the particular proposal for the purpose of determining that no substantive changes have been made resulting from the work of the convention on a particular proposal. I think it will save a lot of time in the long run in requiring this type of coordination, so that the substantive committee would not then be inclined to make a lot of objections on the floor of the convention once Style and Drafting has completed its work and require then, the coordination of the Committee on Style and Drafting with the particular substantive committee which handled the proposal.

Questions

Mr. Brown. Mr. Casey, I'm concerned about the five day provision. With the pace under which we're operating right now and, making reference to Senator Rayburn's comments yesterday about the pressure of committees not meeting, do you think that five days is enough? If a complicated article is sent back to a committee and the committee just can't meet in those four or five days, will that...I'd hate to see the committee waive its right to comment on style and drafting within...so important?

Mr. Casey. There's no particular magic number, but five days is a figure that seemed to satisfy most people that did not want to go any longer than five days, yet I think a substantive committee requires at least five days, and I think we should consider this, that a substantive committee that's really on the ball is going to have at least one or two reports as they progress on a particular proposal, so that the substantive committee, I think, will be continuously informed of what progress is being made on its proposal. I would therefore think that five days is adequate if you're concerned about five days not being enough time. The practice has been that the substantive committee is being furnished with a copy of the proposed amendments that are on stylistic changes and changes in punctuation and wording and things of that nature. The members of the substantive committee would be made aware of these changes on style and drafting, and would offer the views of whether the substantive committee is in favor of or against the proposed amendments.

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amendments on a proposal.

Mr. Brown But, who makes that decision? As I read this, if the Style and Drafting changes go back to the substantive committee and the substantive committee says "No, we like it just the way it was. That was our intention. That's the way we wanted it reported out." Style and Drafting has final veto power, is that right, they can...they have the decision to determine whether or not it's a substantive change or not. Is that correct?

Mr. Casey Style and Drafting certainly has the final say-so as a committee. Of course the final decision makers will be the convention itself, because Style and Drafting must submit the proposal back to the convention, but what we're really concerned about are merely two things. Number one, I think the substantive committee might be in a position as the best decision maker as to determine whether a substantive change is actually being made because they are most familiar with the subject matter. Secondly, I think it's going to be a time-saver, because if you have seen the recommended stylistic changes on the Legislative Article alone, 264 changes have been recommended by the research staff in the area of style and drafting. So, all I'm suggesting is that we make sure that these 264 changes, and it is a comparable or similar amount on the Executive Article, that these changes are strictly stylistic.

Mr. Kean Tom, I'm in accord with what you're trying to do; I just want to make sure that I understand the procedure that will be followed once the proposal has been referred to the substantive committee. Whether it makes comments or doesn't make comments, it goes back to the Committee on Style and Drafting and from there will be reported to the floor.

Mr. Casey That's absolutely correct.

Mr. Kelly Tom, I don't believe you were at the last Style and Drafting meeting that we held but it was a consensus of the committee to come up with a recommendation just as you've done here. So, I think we could say that the committee would be basically in favor of what you have here.

Mr. Casey Mr. Kelly, in answer to that, I went to both Style and Drafting Committee meetings. After the first one I was somewhat concerned that the committee might go too far. That's why I offered the resolution, and as a result of the second meeting, I think this is really what the committee intends to do anyway...to at least coordinate its efforts with the substantive committee.

Mr. Kelly I think you're absolutely right.

Mr. Asseff Mr. Casey, as you know, I am in agreement with you, and as Mr. Kelly pointed out, the Committee on Style and Drafting of which we both are members, unanimously agreed to follow this. My only concern is this: is whether or not the provision is clear as to the procedure that should be followed. I mean I'm all for it, but I'm worrying about the five days, should the report be returned to you let us say on a Friday or something of that sort and whether or not the relationship to each other is clear. I'm all for it.

Mr. Casey Dr. Asseff, I think it's clear, and I don't think we should allow any more than five days and if the committee has submitted it back to the substantive committee on a Friday or a Saturday, I think that substantive committee is under a moral and, of course, a legal obligation under our rules, to do their work rapidly.

Mr. Asseff Well, if you're satisfied, it's all right with me.

Mr. Goldman Delegate Casey, you probably know

that I'm for this resolution, too. On the question of the five days, that several people seem to be concerned with, isn't it human nature to always put off things to the last minute? If you give them more time, they'll just put it off. If you give them the five days, there's no earthly reason why they can't get it done.

Mr. Casey That's correct, Mr. Goldman. Fifteen days would be no problem for them, but on October 26, I think five days could almost be too long. I'd hate to have any more time than five days.

[Resolution adopted without objection.
Motion to take Committee Proposal No. 22 out of its regular order adopted without objection.]

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 22, introduced by Delegate Stagg, Chairman on behalf of the Committee on the Executive Department.

A proposal making provisions for a code of ethics and the Louisiana Board of Ethics.

The proposal was reported out on August 23, reported favorably, and on August 24 was read and ordered engrossed and passed to its third reading.

So the white copy as introduced is still a true copy of the bill. It's Committee Proposal No. 22. I'll get the numbers here in a second.

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, Committee Proposal No. 22 establishes in the proposed new constitution one Board of Ethics. The purpose of the proposal is to make sure that there shall be uniformity in the determinations with respect to considerations about ethical conduct of all state officials and of all state employees. This particular proposal is rather simple. It's the vehicle authorizing, of course, the legislature to act with respect to the adoption of the code, but it also, in Section B, provides that subject to the confirmation of the Senate, that there shall be seven members appointed by the governor, one from each Supreme Court district, for six year terms. Now, very frankly, this provision was inserted in here in order that the governor, with the consent of the Senate, could give proper balance geographically and otherwise to the constitution...to the composition I should say...of the board. Just so there won't be any misunderstanding about it, I want to also direct your attention very briefly to Committee Proposal No. 23. That's the dual office holding proposal that is being proposed by the Committee on the Executive Department, and there is an interrelationship between the proposed dual office holding provision and the Board of Ethics, in that this Board of Ethics would supervise in addition to any other duties prescribed by statute...would supervise the dual office holding concept in all matters relating to the holding of more than one position by employees and officials of the State of Louisiana. Now, Mr. Chairman and ladies and gentlemen of the convention, there have been many very fine speeches made by delegates to this convention about our image and about what the public wants and about what the public needs and what the public expects of this constitution. I don't believe that we are going to ever be involved, nor have we ever been involved, in an area more important to the integrity of our efforts and to the success of our efforts than in dealing with these two proposals that are going to be before you this morning. Reverting back then to Committee Proposal No. 22, we ask that you give consideration to this rather short provision with respect to the mandate that the code of ethics be constituted and also the method of its composition in order that we can provide in the constitution the basis for competent and comprehensive legislative action.

I yield to any questions.

Mr. Stinson. Mr. Gravel, is it the intention of the committee that these be overlapping terms?

Mr. Gravel. The committee did not so provide, but in view of the fact that the appointments are made by the governor, that may be something that should be considered. But the committee in its Proposal Number 22 did not provide that there be overlapping terms.

Mr. Stinson. I am assuming that the committee is your committee, is that correct?

Mr. Gravel. Yes, sir. I think Mr. Stinson is nodding his head. On that particular provision, I was not at the meeting, but he says yes, it was considered, and apparently the committee decided that the terms would not be overlapping.

Mr. Stinson. I am assuming that the committee is your committee, is that correct?

Mr. Gravel. Yes, sir. I beg your pardon.

Mr. Gravel. I think the idea there was that it would be left up to the legislature, in the act. That's correct. Thank you, Mr. Abraham. That the legislature could provide for overlapping terms.

Mr. O'Neill. Mr. Gravel, extending on Mrs. Zervigon's question, I notice here there is no limit on the terms that a member could serve, is that correct?

Mr. Gravel. Yes, sir. I think that's correct.

Mr. Stinson. Mr. Gravel, if they are all for six years, how can they overlap? The legislature can't overlap them.

They can't make any for less than that or more than that, so they are all going to have to go out at the end of each six years, won't they?

Mr. Gravel. I think that the legislature could, of course, provide for six year terms, but I doubt under the language as it's written, Mr. Stinson, that they could provide for overlapping six year terms. There'd have to be some change in that. I agree with you on that.

Mr. Stinson. But the way the constitution would appoint all, the next governor or else he in his second term couldn't, then the next one would appoint all again, is that correct?

The next thing, Mr. Gravel, this is not in the present constitution, I don't believe. How are they appointed now, from the Supreme Court districts now, or how?

Mr. Gravel. Let me say this: there is a provision in the constitution with respect to the Board of Ethics, to two Boards of Ethics.

Mr. Stinson. I am assuming that the committee is your committee, is that correct?

Mr. Gravel. No, sir. They are not...they don't cover geographical areas. They are appointed from, I think, specific categories, if I'm not mistaken by, for example, from labor, from business, and two or three other categories on the Board of Ethics that relates...that handles matters relating to public officials is on another basis, where the governor makes one appointment, and then he makes two other appointments subject to confirmation by the Senate.

Mr. Stinson. Mr. Gravel, the next question, I don't exactly know the Supreme Court areas, but it's a fact that Orleans area would have more than the rest of the State. Is that due to the fact that you think that we'd need more to try to

one member should come from each of the six Supreme Court districts, and then one other member could come from any Supreme Court district. It would not mean that that seventh member, so to speak, Mr. Stinson, would have to come from Orleans.

Mr. Arnette. Mr. Gravel, I was at the committee meeting when we discussed this, and I think maybe we'd better...need to clear up something about the overlapping term concept, and my understanding was at the committee meeting we agreed to put this in the schedule which would easily facilitate overlapping terms. We just didn't think the language should be in that particular section as it is written. Did you know that?

Mr. Gravel. No, I did not, but I can understand. We did that in one or two other instances, and I think then what you're saying is that we felt that the first appointments could be handled on a one through six year appointment basis in the schedule because that then would be a temporary provision, and then there should not be any permanent tie-down in the constitution. We did that I think in one or two other cases, and thank you, Mr. Arnette, for telling me that.

Mr. Kean. Mr. Gravel, in the present constitutional provision dealing with the Code of Ethics, it provides for appeals from the decisions of the Board to the First Circuit Court of Appeal. I've looked at the Judiciary Article dealing with appeals to the appellate courts, and it raises two questions in my mind: if we don't have a similar provision in this section, whether or not there would be any right of appeal because I would doubt that the legislature could grant that right without some authorization from the constitution to do it. Would you address yourself to that question?

Mr. Gravel. I think that's true, but I don't know that there would be any reason—I may be in error—but I don't know if any reason why the legislature in the Code of Ethics would be precluded from setting forth appellate jurisdiction from the determinations of the Board. In other words, I think that we didn't try to put in all of the concepts because we are pretty much leaving up to the legislature the authority to adopt a Code of Ethics. In my judgment the legislature could provide for review of its determinations to either a district court or to an appellate court or to the Supreme Court.

Mr. Kean. Well, I asked the question because the provision dealing with the appeals to the appellate courts provides that it has jurisdiction over all civil matters within the circuit or language to that effect, or all civil cases, and that raises the question in my mind under that language whether the legislature could give the appellate courts jurisdiction of an appeal from a purely administrative body without some constitutional provision for that appeal.

Mr. Gravel. I think that's a question about an appeal from a determination by the Board of Ethics to an appellate court or to the Supreme Court that you might have to have additional language in the constitution to that effect. I would...well, the legislature could provide that the only appeal, the only right of appeal, is to the Supreme Court. I think the legislature could provide that could not provide for appellate review of the court of appeal or the Supreme Court level.

Mr. Drew. Mr. Gravel, by...haven't you completely tied...hands?

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Mr. Gravel In other words, that would be the area in which the Board of Ethics would be able to operate.

Mr. Drew Nothing but conflict of interest, malfeasance, nonfeasance, or any of that couldn't be incorporated in a Code of Ethics.

Mr. Gravel There would not be, and in our opinion should not be, because there is ample provision in the criminal laws of the state to take care of those particular problems if we didn't want to duplicate...

Mr. Drew Well, what it amounts to in fact is, you've left nothing to the legislature, isn't it?

Mr. Gravel I don't agree with that at all, Mr. Drew. That doesn't follow at all to me, but I don't think that we should talk about the authority of the criminal courts and criminal jurisdiction in the Code of Ethics. That's an entirely separate matter in my judgment.

Mr. Munson Mr. Gravel, you may have already answered this, but what happens to our present Code of Ethics?

Mr. Gravel Well, we presently have two Boards of Ethics.

Mr. Munson One for elected officials and one for state employees.

Mr. Gravel This would be a directive to the legislature that those two boards in effect be consolidated and that one board consider all of the problems that relate to conflicts between public duty and private interest.

Mr. Munson In following Harmon Drew's questions, all of those matters that are covered in the present Code of Ethics for state elected officials and state employees could not be covered in a new Code of Ethics.

Mr. Gravel I don't understand what you mean by that.

Mr. Munson Well, this only said a Code of Ethics prohibiting conflict between public duty and private interest. The present Code of Ethics goes much further than that.

Mr. Gravel Well, all that the present Code of Ethics does, and I don't think it would prohibit a new Code of Ethics from doing the same thing, but all that the present Code of Ethics does is to make it a misdemeanor to violate the provisions of the Code. I mean insofar as any criminal prohibitions are concerned or any criminal consequences are concerned.

Mr. O'Neill Mr. Gravel, I see no provision here for the removal of these people from the Board. Can you go into that a little bit?

Mr. Gravel Well, I think that the general provisions that have to do with the removal of public officers and employees, of course, would be available in this case.

Mr. O'Neill Could you tell us all, Mr. Gravel, how the present Board of Ethics is composed and who makes the appointments there?

Mr. Gravel I thought I had covered that to the best of my ability. There are two Boards of Ethics at the present time, one dealing with employees and the other dealing with statewide elected officials and members of the legislature. There are two separate boards. They are constituted in a different manner. Now, the detail as to how they are appointed I don't have before me, but I do know that the Employees Board constitutes five people who are appointed from specific categories.

Mr. O'Neill By the governor?

Mr. Gravel Let me just say this, Mr. O'Neill, so there won't be any misunderstanding. Keep in mind that this directive to the legislature is to enact a Code of Ethics, not just a law that deals in part with the concept that we are trying to present here. A code would be in my judgment comprehensive and could include everything that is not specifically excluded by virtue of the language contained here, which is rather limited language.

Mr. Jenkins Camille, I hate to admit my ignorance but you know I haven't read the report of the before just now because I didn't know they were coming up. Do we have a research memo on these proposals such as we've been given here on the local government section and on other sections?

Mr. Gravel Not that I know of, Mr. Jenkins. Not on Committee Proposal No. 22, that I know of.

Mr. Jenkins Well, I mean so we don't have a clear presentation of the differences.

Mr. Gravel Well, Mr. Jenkins, frankly, the committee felt, and I feel that this is a very simple provision, but a very important provision in the constitution, and all that we are doing here is to in effect say that there shall be one Board of Ethics instead of two, and that the legislature shall prepare a comprehensive Code of Ethics and three, that the Board of Ethics shall be constituted as set forth in Section 8. Frankly, I think this is a good way to proceed with respect to a constitutional provision, and we are leaving, very frankly, a full implementation of this directive to the legislature.

Mr. Jenkins Well, where in the new constitution would this provision fit? I notice there's no article or section. What article would it be under?

Mr. Gravel Well, that would depend upon how the constitution, the document, is finally composed. It might be under the general provisions or it could be under some other area that would be defined and delineated by the staff. I can't locate it for you now, unless I know what else has been adopted. I don't know that I could even do it then. But I can assure you that a place can and would be found for it in connection probably with the general provisions that relate to the government of the State of Louisiana.

Mr. Jenkins Well, can you give me the present citations in the 1921 Constitution on these matters?

Mr. Gravel Article XI, Section 27.

Mr. Hayes Mr. Gravel, isn't it true that the Supreme Court districts have some inequalities in their representation that they don't have a fair representation for each judge?

Mr. Gravel I think the Supreme Court districts are not apportioned according to the "one man, one vote" concept.

Mr. Hayes Right. Now, you have seven districts according to this, and you're trying to use some already cut districts. Wouldn't it be better to use the U.S. representative districts, would have a fair representation for everybody.

Mr. Gravel There's no question but that there would. Then we would run into the probability of having a board constituted of probably nine in order to get an odd number, one from each congressional district and maybe one appointed at large by the governor. That may be an alternate solution. Let me just say this, on the composition here as far as the Supreme Court district representation is concerned and so forth, I don't think that the committee has any hard and fast feeling about it. The main idea is to give adequate representation. We

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that's why we went to the Supreme Court district concept, Mr. Hayes. That was the reason for it.

Mr. Burns Mr. Gravel, I notice it provides that a citizen from each Supreme Court district will be ...compose the board. Is there any provision in the present Board of Ethics as to whether elected state officials can be members of the board, or are they eligible for membership?

Mr. Gravel I don't know that there is, Mr. Burns; but, of course, the Code of Ethics, I think, would have to prescribe any additional, and could prescribe any additional, qualifications or any prohibitions with respect to the holding of membership on the board.

"... I was just wondering - to the propriety of having state officials compose the board, or comprise the board and...and pass on their own ethics."

Mr. Gravel: Frankly, I don't think there is any question but the code should prohibit any employee of the state or any official from the state from being on the board. That's my own personal opinion, however, sir.

Mr. Thompson Mr. Gravel, is this going to limit people that say are lobbyists to this convention, that they couldn't be delegates or hold other offices or just what do you mean by this?

Ms. A.9.2.2.1. 15. 1900. 18. 1901. 19. 1902. 20. 1903. 21. 1904. 22. 1905. 23. 1906. 24. 1907. 25. 1908. 26. 1909. 27. 1910. 28. 1911. 29. 1912. 30. 1913. 31. 1914. 32. 1915. 33. 1916. 34. 1917. 35. 1918. 36. 1919. 37. 1920. 38. 1921. 39. 1922. 40. 1923. 41. 1924. 42. 1925. 43. 1926. 44. 1927. 45. 1928. 46. 1929. 47. 1930. 48. 1931. 49. 1932. 50. 1933. 51. 1934. 52. 1935. 53. 1936. 54. 1937. 55. 1938. 56. 1939. 57. 1940. 58. 1941. 59. 1942. 60. 1943. 61. 1944. 62. 1945. 63. 1946. 64. 1947. 65. 1948. 66. 1949. 67. 1950. 68. 1951. 69. 1952. 70. 1953. 71. 1954. 72. 1955. 73. 1956. 74. 1957. 75. 1958. 76. 1959. 77. 1960. 78. 1961. 79. 1962. 80. 1963. 81. 1964. 82. 1965. 83. 1966. 84. 1967. 85. 1968. 86. 1969. 87. 1970. 88. 1971. 89. 1972. 90. 1973. 91. 1974. 92. 1975. 93. 1976. 94. 1977. 95. 1978. 96. 1979. 97. 1980. 98. 1981. 99. 1982. 100. 1983. 101. 1984. 102. 1985. 103. 1986. 104. 1987. 105. 1988. 106. 1989. 107. 1990. 108. 1991. 109. 1992. 110. 1993. 111. 1994. 112. 1995. 113. 1996. 114. 1997. 115. 1998. 116. 1999. 117. 2000. 118. 2001. 119. 2002. 120. 2003. 121. 2004. 122. 2005. 123. 2006. 124. 2007. 125. 2008. 126. 2009. 127. 2010. 128. 2011. 129. 2012. 130. 2013. 131. 2014. 132. 2015. 133. 2016. 134. 2017. 135. 2018. 136. 2019. 137. 2020. 138. 2021. 139. 2022. 140. 2023. 141. 2024. 142. 2025. 143. 2026. 144. 2027. 145. 2028. 146. 2029. 147. 2030. 148. 2031. 149. 2032. 150. 2033. 151. 2034. 152. 2035. 153. 2036. 154. 2037. 155. 2038. 156. 2039. 157. 2040. 158. 2041. 159. 2042. 160. 2043. 161. 2044. 162. 2045. 163. 2046. 164. 2047. 165. 2048. 166. 2049. 167. 2050. 168. 2051. 169. 2052. 170. 2053. 171. 2054. 172. 2055. 173. 2056. 174. 2057. 175. 2058. 176. 2059. 177. 2060. 178. 2061. 179. 2062. 180. 2063. 181. 2064. 182. 2065. 183. 2066. 184. 2067. 185. 2068. 186. 2069. 187. 2070. 188. 2071. 189. 2072. 190. 2073. 191. 2074. 192. 2075. 193. 2076. 194. 2077. 195. 2078. 196. 2079. 197. 2080. 198. 2081. 199. 2082. 200. 2083. 201. 2084. 202. 2085. 203. 2086. 204. 2087. 205. 2088. 206. 2089. 207. 2090. 208. 2091. 209. 2092. 210. 2093. 211. 2094. 212. 2095. 213. 2096. 214. 2097. 215. 2098. 216. 2099. 217. 2100. 218. 2101. 219. 2102. 220. 2103. 221. 2104. 222. 2105. 223. 2106. 224. 2107. 225. 2108. 226. 2109. 227. 2110. 228. 2111. 229. 2112. 230. 2113. 231. 2114. 232. 2115. 233. 2116. 234. 2117. 235. 2118. 236. 2119. 237. 2120. 238. 2121. 239. 2122. 240. 2123. 241. 2124. 242. 2125. 243. 2126. 244. 2127. 245. 2128. 246. 2129. 247. 2130. 248. 2131. 249. 2132. 250. 2133. 251. 2134. 252. 2135. 253. 2136. 254. 2137. 255. 2138. 256. 2139. 257. 2140. 258. 2141. 259. 2142. 260. 2143. 261. 2144. 262. 2145. 263. 2146. 264. 2147. 265. 2148. 266. 2149. 267. 2150. 268. 2151. 269. 2152. 270. 2153. 271. 2154. 272. 2155. 273. 2156. 274. 2157. 275. 2158. 276. 2159. 277. 2160. 278. 2161. 279. 2162. 280. 2163. 281. 2164. 282. 2165. 283. 2166. 284. 2167. 285. 2168. 286. 2169. 287. 2170. 288. 2171. 289. 2172. 290. 2173. 291. 2174. 292. 2175. 293. 2176. 294. 2177. 295. 2178. 296. 2179. 297. 2180. 298. 2181. 299. 2182. 300. 2183. 301. 2184. 302. 2185. 303. 2186. 304. 2187. 305. 2188. 306. 2189. 307. 2190. 308. 2191. 309. 2192. 310. 2193. 311. 2194. 312. 2195. 313. 2196. 314. 2197. 315. 2198. 316. 2199. 317. 2200. 318. 2201. 319. 2202. 320. 2203. 321. 2204. 322. 2205. 323. 2206. 324. 2207. 325. 2208. 326. 2209. 327. 2210. 328. 2211. 329. 2212. 330. 2213. 331. 2214. 332. 2215. 333. 2216. 334. 2217. 335. 2218. 336. 2219. 337. 2220. 338. 2221. 339. 2222. 340. 2223. 341. 2224. 342. 2225. 343. 2226. 344. 2227. 345. 2228. 346. 2229. 347. 2230. 348. 2231. 349. 2232. 350. 2233. 351. 2234. 352. 2235. 353. 2236. 354. 2237. 355. 2238. 356. 2239. 357. 2240. 358. 2241. 359. 2242. 360. 2243. 361. 2244. 362. 2245. 363. 2246. 364. 2247. 365. 2248. 366. 2249. 367. 2250. 368. 2251. 369. 2252. 370. 2253. 371. 2254. 372. 2255. 373. 2256. 374. 2257. 375. 2258. 376. 2259. 377. 2260. 378. 2261. 379. 2262. 380. 2263. 381. 2264. 382. 2265. 383. 2266. 384. 2267. 385. 2268. 386. 2269. 387. 2270. 388. 2271. 389. 2272. 390. 2273. 391. 2274. 392. 2275. 393. 2276. 394. 2277. 395. 2

Mr. Thompson: Well, I'm talking about in the future. I'm sure it won't because it don't go into effect until after the convention. I understand that the present Board of Ethics are doing a pretty good job. What's going to happen to it?

Mr. Graves: Well, Mr. Thompson, the two--I think I've stated that--the two boards that are presently in existence...if this constitution passes and if this is adopted, the two boards would then be reduced to one. There would be only one board. Now, there is...that's all that it does. There would be only one Board of Ethics instead of two. We could spend hours talking about whether or not you should have the two boards that are presently in existence, but that's where we are talking about the conflict between private interest and public duty, there should be one overriding board operating similarly in my judgment to the Civil Service Commission that would cover, under a properly adopted code, all of the people that would be encompassed in such conflict cases.

Mrs. Warren Mr. Gravel, Mr. Burns asked one of the questions I wanted to ask you. The next question is, the terms that they would serve could, if you don't specify some limit of terms that they could serve, one could serve six years, twelve years, eighteen and make a career out of being on the Board of Ethics.

Mr. Gravel Well, if the succeeding governors would continue to appoint the same people under this provision, if it's not amended, as it's presently before you, Mrs. Warren, that is correct.

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identities and freedom, and do you share my concern
in giving a seven-member
governor a sort of a roving commission to investigate
the ethics of all of the officials in the state,
as perhaps some conflict with the right of individuals
to be charged with a crime in the manner
that we've set out in the Bill of Rights, and the
right of privacy?

Mr. Gravel: What I think probably, I don't know that I quite understand your question because we are not talking about the conflict that exists between two of the values that we have in our society about the conflict between public interest and private duty. We're talking here about the question of whether or not a person is in the public service operating in a public capacity. That is, Louisiana, whether his conduct is ethical or just as you know we have a Code of Ethics in the legal profession, the judiciary has a Code of Ethics. I think that we have a Code of Ethics for the Legislature, the individual and anybody else, Mr. Burton

Mr. Burson Well, that is the point though, Mr. Gravel. The way this thing is set up, is there any guarantee, for instance, that the conflict which might be allegedly a conflict of ethics might in fact be a political conflict, and that this Board of Ethics appointed totally by the governor could be used for such purposes.

Gravel: Well, Mr. Burton, the only way I can answer your question is to say that in Section A the delimitation of the power of the Code of Ethics is limited to the area whereby they can act in the bona fide interest of a State. It prohibits dealing between public utility and private interest of all officials and employees of the State. That's what it proposes to do. Frankly, I'm somewhat amazed at the idea that there could be as much concern about such a provision when I think of the unethical conduct that many people think is imperfect, and that a new code can and should be adopted. The Legislature that would be comprehensive of one board that would be in charge of such irregularities as to the proposed constitution.

Mr. Burson: Would you agree that the concern that I have just expressed has also been articulated recently by the State Superintendent of Education, Mr. Michot, with regard to allegations of breaches

Mr. Gravel: No, sir, I would not agree because I am very familiar with that situation.

Mr. Gravel: Mr. Burson, in the case involving Mr. Michot, as I understand it, there was some complaint made against him, and the Board of Ethics has not acted. They attempted to act, and there was restraint placed upon that action by the court because the rules of procedure had not been followed by the board.

Mr. Burson. But wasn't the genius of Mr. Nichols's argument, that even if the law was bad, it was better than no law at all? That is the argument that we have heard in the Supreme Court and we have to have at the present time?

the board had not proceeded correctly under the law, you're absolutely right in that, but what

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legislators, it's composed of three people: one named by the House, one by the Senate and a retired or a former judge named by the governor. Under this proposal if I read it right the governor will name all people. Is that correct?

Mr. Gravel: That's correct.

Mr. Rayburn It further includes all elected officials, whether you are a constable or police juror or anything else, is that correct?

Mr. Gravel It would include all persons holding public office either in the state or any of its political subdivisions.

Mr. Rayburn. Then the people that are directly involved would have no authority or nothing to do with the makeup of the people who we're going to cover them, is that correct?

Mr. Gravel As I mentioned earlier, Mr. Rayburn, the Code of Ethics could prescribe the qualifications for the appointees by the governor.

Mr. Rayburn Mr. Gravel, are you an attorney?

Mr. Gravel Well, sometimes, Mr. Rayburn.

Mr. Rayburn Would you agree to the same provision that to let the D.A. of each parish in this state select the jury? Or do you think that if you represent someone that you should have a little something to do with helping to select it. This lets the governor of the state in my opinion, Mr. Gravel, name every person to be named, without any specifications. Our present code lets the House name one, that's as it governs us...

Mr. Gravel No, sir.

Mr. Rayburn ...lets the Senate name one and the governor name one, which I think is pretty fair.

Mr. Gravel: Yes. Rayburn, what the present code did is to prescribe that the commission shall consist of five persons--this is with respect to the legislature--five persons, to be selected in the manner chosen by the legislature. Now, it's my understanding, and I may be in error about this, but it's my understanding that the legislature has provided that the governor has made a list of three or four potential appointees named by the legislature. Let's be sure we understand each other.

Mr. Rayburn No, I understand that, but I'm talking about now the Code of Ethics for statewide elected officials and members of the legislature. You are correct under the other Code of Ethics, it's five and they specify where they'll come from. The legislature does.

Mr. Gravel I think, isn't it correct that the retired judge is selected by the governor.

Mr. Rayburn The retired judge is selected by the governor; the House of Representatives submits one name which cannot be a member, and the Senate submits a name which cannot be a member.

Mr. Gravel: But those are names that are submitted to the House and to the Senate, if I recall correctly, by the governor.

Mr. Paytern. No, sir. We nominate him ourselves in the Senate. We submit the name to the governor for him to appoint.

Mr. Gravel Well, I may be in error about that. Mr. Rayburn, but I think you are. I think that the last session when Mr. Methvin was appointed that name was sent to the House by the governor, and I think that when Mr. Oruso was appointed, that name was sent to the Senate by the governor. I may be in error about that.

Mr. Rayburn. It was sent there for us to confirm, but in other words, the name was sent to the governor by the Senate.

Mr. Gravel I thought it was done just the opposite.

Mr. Rayburn No, sir, the governor sent the name that we had sent back down for confirmation.

Mr. Gravel Well, it seems to me, frankly, to get by it, that there's an interplay between the governor's office and the House in the one instance and the governor's office and the Senate in the other instance, before there can be any final...

Mr. Payburn: Mr. Gravel, could you visualize that this could happen: if I'm in the legislature or I might be a sheriff or a district attorney or something, and I wasn't getting along too good with the governor, and he named all the appointees, and in the heat of a campaign they called me up and accused me of something, could you realize what that could happen to me?

Mr. Gravel: If you've got people that are appointed by the governor with no other qualifications established and they are going to improperly discharge the duties of their office, they could do something wrong, Senator Rayburn. I agree with that.

Mr. Rayburn Yes, sir, I think I've seen a little of that happen. I might have been confused, but I believe I've seen a little, a few things like that happen in this state. I hope it doesn't ever happen again, but it has.

Mr. Gravel: You've probably also seen a lot of instances where people are holding two jobs that they ought not be holding both of them, too. They're all over the state. There's a lot of that.

Mr. Rayburn I'm afraid that could be said about some of us.

Vice Chairman Casey in the Chair

[illegible]

Amendment

Mr. Poynter: Mr. Duval sends up amendments as follows:

Amendment No. 1. On page 1, delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

"Section ____, (A) The legislature shall enact a code of ethics prohibiting conflict between public duty and private interests of all state employees and elected"...insert the word "state, elected state officials".

(B) The legislature shall create a Board or Boards of Ethics which shall investigate all allegations of violations of such a code "... place a period" there and delete the balance of the language. Delete the last clause. It simply reads after the...on the third line of Paragraph (B) "of such a code." Delete the balance of the language. Delete the last clause.

Mr. Duval M. Acting Chairman, and fellow delegates, this is basically an attempt to arrive at a synthesis of the feeling of this group. It the...it basically keeps the present law intact. We do have a Code of Ethics and a board...and we have actually two Boards of Ethics: one which investigates employees, one which investigates elected state officials. I think when you attempt

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Mr. Duval The reason the board or boards is put in there...there presently is two boards. We did a...we heard from the...we heard testimony from the representative of the two boards and right now the two...they...it was their belief that there should be one for elected officials and one for state employees. We didn't have a great abundance of evidence to change it to one board, but this gives the legislature the right to have one board in the event that the law needs to be changed. Presently there are two boards and we didn't feel we had enough information to change the law, but we give the legislature the flexibility to change the law in the event that they think it should be only one board.

Mr. Fayard As I further read your amendment, it says, that "the board shall investigate all allegations in violation of the code and that the Code of Ethics will prohibit conflict between public duty and private interests." Now is this all the code will be allowed to do? In other words, don't you feel that there are other matters of ethics that should be covered by the code other than just conflict of interest?

Mr. Duval I think you might be right. I think... I think conflict of interests is very broad, however, and can accomplish many things, but it is my opinion that this doesn't limit the legislature from embellishing on that mandate.

Mr. Fayard With this specific language in there, it does not limit the legislature?

Mr. Duval Not at all. I don't think you...you have to prohibit the legislature in my opinion.

[Quorum Call: 90 delegates present and a quorum.]

Mr. Brown Would you state again if you have already so stated, why did you limit this just to state officials and didn't include all officials?

Mr. Duval The reason is, that there seemed to be a great deal of opposition primarily to the committee proposal on the basis that political subdivisions were included. It felt that it would give the governor a great advantage in elections because he appointed the Board of Ethics, could use it as an intimidation; it violates home rule concept. This was the basic tenor of the opposition and this is why this amendment is attempting to get something in the constitution on ethics and the Board of Ethics that will meet the sense of the constitution. That's...

Mr. Brown Are you for it, are you for including all officials personally?

Mr. Duval No. I am for my amendment as it says...as it speaks...

Mr. Brown You're against letting it to include local officials?

Mr. Duval Yes.

Mr. Arnette Just a couple of questions, Stan. It seems like your last clause here would prevent us from having any other additional duties provided by the constitution. Was that your intent?

Mr. Duval No.

Mr. Arnette Because it says, that "they would only investigate allegations of the code and outset your other powers and duties consistent with investigations of a code as may be provided by statutes" and does not make any exception for any other provision we might provide in the constitution or any other duties which weren't consistent with...allegations of violations of code.

Mr. Duval I'm sure if something else is placed in the constitution, we could easily put "except as

otherwise provided in this constitution." I don't think that will be a real problem.

Further Discussion

Mr. Abraham In Committee Proposal No. 3, we passed in Section 8 a session that stated that "legislative office of the public trust in every effort to realize personal gain through official conduct is a violation of that trust," which is a mighty high sounding language. Then we said, "the legislature shall enact a code of ethics prohibiting conflict between public duty and private interests of members of the legislature." Well, I submit to you is why are we limiting this only to members of the legislature? We need this Code of Ethics for all state employees and officials and this is what we are attempting to do with this particular committee proposal. The Duval amendment does not detract from this in any way other than it leaves it up to the discretion of the legislature as to how the board or the boards, if they decide to create two, shall be selected and how they will administer their duties. Now, personally, I am in favor of one board to administer this entire code; however, I will leave it up to the discretion of the legislature in their infinite wisdom to determine whether they need one board or two boards. The present law, the present constitution in Article XIX, Section 27, provides for the Boards of Ethics. It provides that the legislature shall select the...the members of the boards by whatever means they may want to set up and I am willing to leave that open to the legislature to do that, but the point that we need to make is that we do need a code of ethics in this state. Now, all you good government people who are interested in this type of thing, I don't see how you can argue against having a Code of Ethics. I don't see how you can argue against having a board to administer this Code of Ethics. There is no point in having a code of ethics if you simply have it and then nobody does anything about it. This has been the complaint through the years. The complaint now is that sometimes that the board is too limited in its...in its powers and that all it can do is investigate and then that's all it can do. The board needs to be given some powers and duties consistent with the...that it needs in order to investigate and to do something about violations of such a code.

We do need to have a Code of Ethics in this state. There need to be some rules by which our officials and employees are governed. There does need to be some watchdog agency who will oversee this code and who will administer it. I do not see how anyone can say, who is interested in good government, can say that we do not want such a code in this particular state, and I urge the adoption of this amendment. I will take any amendment that I can get which will provide for such a code and which will provide for a board to administer this code and I think that the legislature does need to give this board some teeth by which it can administer the code. Mr. Chairman, I appreciate your calling the attention of the floor to what I am trying to say, but I am also going to ask that on all of these votes I would like to see a record vote so we can find out how many people are interested in this type of thing.

Mr. Casey We will order a record vote at the proper time, Mr. Abraham.

Further Discussion

Mr. Drew Mr. Chairman, and ladies and gentlemen, I have one serious objection to Mr. Duval's amendment that I had to the committee amendment also and I think it raises a very serious question that you had better consider. The way it is written, I think that it limits the legislature in enacting a code of ethics to prohibit conflict of interests, period. This is a little different from the general constitutional interpretation that you can do anything you are not prohibited from doing.

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For the reason here you are specifying exactly what the legislature can do; therefore, you are limiting by implication at the least. There will be an amendment which has been passed out, which Mr. DeBlieux, Fayard, and myself have coauthored which I think will remove this prohibition and limitation on the legislature and for that reason, I ask that you defeat the amendment.

Amendment

Mr. Poynter Amendments sent up by Delegates DeBlieux, Fayard, and Drew.

Amendment No. 1. On page 1, delete lines 12 through 23, both inclusive in their entirety and insert in lieu thereof the following:

"Section ____ (A) The legislature shall enact a Code of Ethics for all officials and employees of the state.

(B) The Code of Ethics shall be administered by a Board of Ethics created by the legislature with such qualifications and terms of office and duties and powers as provided by law."

Mr. Drew Mr. Chairman, may I withdraw it for a technical amendment and then resubmit it immediately? I would like to insert after the word in the second line "all", insert the word "state."

Chairman Henry in the Chair

Personal Privilege

Mr. Leithman Fellow delegates, I'll ask in closing out the birthday party I'll ask... on behalf of Mr. Toomy and myself, our roommate to step forward, Mr. Alario. Some things are very difficult to tell a person in life and I guess you have experienced this. The three of us room together, and you from time to time have noticed a very obnoxious odor, and on behalf of his two roommates we would like to present him with a present at this time celebrating his 30th Birthday. John, from your two roommates.

Mr. Alario Right Guard. That'll help take care of some of the odors I guess we have been finding around here. I certainly thank you for sharing...and celebrating my birthday with me. I certainly want to thank my delegation and, of course, that's the advantage of having a large delegation. When they put in, they can buy a big cake like that. The disadvantage is having a guy like Lawrence Chehardy in your delegation who consumes most of the cake.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Drew]. On page 1, delete lines 12 through 23, both inclusive in their entirety and insert in lieu thereof the following:

"Section ____ (A) The legislature shall enact a Code of Ethics for all state officials and state employees.

(B) The Code of Ethics shall be administered by a board or boards of ethics created by the legislature with such qualifications, terms of office, duties, and powers as provided by law."

(C) The decisions of the board shall be appealable to the legislature.

Mr. Drew Mr. Chairman, the judges and justices of the state... the legislature will be mandated to enact a full and comprehensive code of ethics. We had no intention of creating a conflict of interest. In Section B we will provide for the terms of office, qualifications, duties, powers as provided by law which will give us, as the opportunity provides, an independent

powers and duties. Under Section C which is incorporation of Mr. Jean's amendment the decision of the board shall be appealable and the legislature shall provide the method of appeal which will give a right of appeal to effect...to protect the individual affected. I ask for the adoption of the amendment.

Mr. Avant Mr. Drew, under this language, "powers as provided by law" could this board or the legislature give the power...the board this power to remove an elected public official for conduct and manners other than we have already prescribed in the articles that we have completed so far?

Mr. Drew Mr. Avant, my opinion would be that we could not go beyond the powers of a removal enumerated in the constitution.

Mr. Drew But all that clear though, is it, Mr. Drew?

Mr. Drew There could be...it could be interpreted the other way, yes.

Mr. Roemer I see...and I get the impression from reading this...that you don't deal or don't purport to deal with local officials; is that true?

Mr. Drew This does not, but it does not prohibit the legislature from dealing with local officials.

Mr. Roemer Well, but...you...it seems to me and let's see if my interpretation is true. In Paragraph A of this blank Section you say, "The legislature shall enact a code of ethics in regards state officials and state employees." There is no such mandate in regard local officials or local employees.

Mr. Roemer No mandate. I'm correct.

Mr. Roemer I wonder why we mandate on the state level and don't mandate on a local level when it seems to me that the necessity for ethical action is the same in both places?

Mr. Drew I would have to agree with you, Buddy, and in my personal opinion I don't see much way to distinguish, but at the same time, there was much opposition on that point that this was more or less of a compromise and does not prohibit the legislature from doing what you are talking about.

Mr. Roemer I see. So, would you agree then that...politically you think this can through...is not necessarily what you subscribed to...hearty, is that it?

Mr. Drew I have no objection to it applying, personally.

Mr. Roemer Well, that...did you know I just now understand that we have an amendment that will put in local officials. Thank you, Mr....

Mr. Roemer I see...the term "official" is synonymous with "local".

Mr. Roemer I see...the term "official" is synonymous with "local".

Mr. Roemer I see...the term "official" is synonymous with "local".

Mr. Roemer I see...the term "official" is synonymous with "local".

Mr. Roemer I see...the term "official" is synonymous with "local".

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Mr. Tobias So you believe it would cover those officers?

Mr. Drew Do I believe it would?

Mr. Tobias ...those officials, yes.

Mr. Drew I do not believe it would cover parish officials, no.

Mr. Tobias Are you aware that the case law in this state would go against you on that?

Mr. Drew That's very possible.

Mr. Jenkins Harmon, isn't it true that the Boards of Ethics right now primarily are advisory in their nature. They can censure, they can criticize, publicize, but they can't actually do anything to anyone, can they?

Mr. Drew As I appreciate it, that's correct.

Mr. Jenkins Well, wouldn't your amendment as written change that concept because when you say that the decisions of the board will be appealable, aren't you saying in effect that they are going to be able to do something to someone, or at least that the legislature could allow them to do something to someone and that, thus, you are going to need a means for appealing those decisions: such as removal from office, such as fines, suspensions from offices, things like that?

Mr. Drew Not necessarily, Woody, because I think any action taken by the Board of Ethics that would be critical of a person should be subject to review.

Mr. Munson Mr. Drew, since we already have a board, two Boards of Ethics and a Code of Ethics, would you mind telling me why we need to put anything like this in the constitution?

Mr. Drew Mr. Munson, I agree with you wholeheartedly and I am sorry that the whole thing hadn't been deleted. It appeared that the... it was the consensus of the convention that something was going in the constitution and for that reason, I thought this was much better than the committee proposal.

Mr. Munson But it is a fact that we do have a code of ethics for elected officials and state officials and we do have two boards?

Mr. Drew That is correct. I agree with you wholeheartedly.

Mrs. Zervigon Mr. Drew, to follow up on Mr. Munson's question, isn't it true that in the drafts that we have already done in this convention, we have a Declaration of Disability by the legislature in case someone is unable to serve, we have a method for declaring a vacancy in an office, we have a method for impeachment, we have removal by suit, and of course, there's always defeat at the polls and what this section would do---is, primarily is to set up a body that can accuse, but cannot dispose. We have plenty of ways of disposing of...state officials already, haven't we?

Mr. Drew We do.

Mrs. Zervigon The other function of a Board of Ethics might be that someone could go and ask...

Further Discussion

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, I speak in opposition to the proposed amendment by Delegates DeBlieux, Fayard, Drew and Duval, primarily, of course, because I oppose strenuously...strenuously the provision in Section A of their proposed amendment

which in effect limits...limits the Code of Ethics to state officials and state employees. If this constitution is going to mandate the legislature to prohibit unethical conduct and to provide a manner by which that mandate can be enforced, it must and it should apply to all officials and all employees of government. How in heaven's name can you justify the discrimination in this constitution against---that is what it amounts to---state officials and state employees by making them amenable to a Code of Ethics and then saying that the sheriffs and the district attorneys and the assessors and the mayors and all others who are involved as officials in the local government process, all of the many, many thousands of employees who are involved as employees in local government are not subject to a Code of Ethics--hear me well,--of uniform application throughout the State of Louisiana. Ladies and gentlemen of this convention, it's most important that we do everything that we possibly can in this document in order to make sure that wrongdoing does not work from the bowels of the broad base of political activity throughout the State of Louisiana, from those areas in every nook and corner of Louisiana that are not subject to the klieg lights of television, to the glare of those who have witnessed the open sessions of the legislature, to the newspaper reporters who are able to see the more important officials and employees in action. All this proposed amendment by this committee does in its principal part which this amendment seeks to irradiate and eliminate is to say this, that the legislature in its wisdom shall enact a Code of Ethics, one prohibiting conflict between public duty and private interests of all officials and employees of the state and its political subdivision. Who in heaven's name can object to that kind of a directive? I don't believe that there is anything that we have done or anything that we can do that will instill in the heart and in the minds of the people of the State of Louisiana confidence in the integrity of our efforts more than to adopt this simple sentence. This sentence means, "Mr. Citizen of Louisiana, Mrs. Citizen of Louisiana, we are going to direct the legislature to come up with a comprehensive document that will insure integrity, honesty, ethical conduct everywhere in the government of the State of Louisiana." Ladies and gentlemen of this convention, I know something about the activities at the level below state government where conduct, reprehensible conduct has gone on for years and years unchecked and unrestrained because there was no overriding influence that could prohibit it. Oh, I know some of you are going to say, "We've got the grand jury to investigate into those kind of things and the district attorneys to investigate into those kind of things and the sheriffs to investigate into those kind of things," but you stop and think about the experiences in our most recent past. You stop and think about the situations that have occurred within the recent years in the State of Louisiana and you stop and ask yourself the question, "If they could act, why didn't they?" Thank you very much.

Further Discussion

Mr. Chehardy Mr. Chairman, brother and sister delegates, I'm up here to speak against this amendment and all amendments to this particular section. This proposal, Committee Proposal No. 22, is as Mr. Gravel pointed out very simple and it is nothing more nor less than something that every public official should abide by. I believe that if you wouldn't abide by it, the criminal laws of the state are such that you would be subject to the penalties imposed by the various sections of the Criminal Code dealing with public officials. However, for a public body, such as we are, charged with bringing a constitution to the people of this state that has meaning, that has intelligence, that contains Bills of Rights, that protects public officials of every category, yet when it comes to an issue which in its basic context and its basic aim is the aim to please... to do the

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...ing by the public, there is all sorts of...
I think it would be the sorriest reflection of our action if we would, in any way, leave this... without making known our sincere... by all of the Code of Ethics, not... state level, but on a local level;... as a big official or a high elected... official, but as an appointed official or as an... employee. I really urge that we get on with our business. If those that have amendments would... fit to withdraw the amendments, I and other... would give in... I would like to move for the passage of Proposal No. 22, if that's the... Mr. Chairman?

21. ...man Casey ...

Mr. Casey Well, we have to dispose of the amendment first, Mr. Chehardy, before we can actually pass on the proposal as submitted.

Further Discussion

Mr. Roemer Mr. Acting Chairman and fellow delegates, I rise to make a couple of brief points just on terms of personal conviction in this matter. I like this amendment, I think regularly, particularly in that it gives to the legislature the power to decide as to the code and the composition of the board. I think it's a fair compromise. I think it's a good idea. I think it's the fact that the government does not have under this particular amendment the license to appoint all the officials or the members of the board that make up the Board of Ethics. However, I cannot see, I fail to discern the difference between corruption or unethical behavior on the state level and at the local level. Some say that this constitution perhaps in regard of Board of Ethics or Code of Ethics is not deal with local officials. I can't see that point. I think it's a problem for all people and for all the officials in this state. Surely, we're not going to say today, or we wouldn't have said yesterday, and we certainly won't say tomorrow that what's good and ethical on the state level will be circumvented somehow on the local level and we won't do anything about it. I don't think any of us here feel that way. Now, some people say that "Well, I don't want to stick it to the local official. Do we want to get at the local official? Well, I'm not talking about sticking it to the local official. I'm talking about getting at the local official. I'm talking about getting at men and women who are in public office. Whether it be on a local level or on a state level, adhering to an acceptable statewide Code of Ethics; it's as simple as that. Some say, and it was said by Mr. Gravel specifically, that we don't want to discriminate against the state official and cause him to adhere to a code that we don't have the local official adhere to. Well, I would say a couple of things. First, we're discriminating in another way. You say the Code of Ethics is more than a weapon to hit somebody over the head with; it's a blueprint; it's a guide; it can be used by the public officials in this state and on a local level to set the tone and pattern of their action; it's a useful tool; it increases their knowledge about what we expect out of their performance. So, I don't want to discriminate against a local official, not only in the sense of not having a weapon, but in the sense of denying them a blueprint for action. Now, let's don't deny them. Let's don't deny them the benefit of knowing what we expect out of them in the law and under a code. To sum up my position, I have to be against this amendment because it does not go far enough. I will support an amendment that's coming up that takes the language in many respects of the Code of Ethics and goes further to include all officials who are in public office.

Mr. Ryan Buddy, there is nothing in this bill...

...that... from including local... Ethics, is there?

Mr. ... That's true.

...constitution," they could, in the enactment of this Code of Ethics that this mandates the state officials, include local officials, could they not?

Mr. Roemer That's exactly... to you or freshen your memory. A few minutes ago I asked Mr. Drew that same point. He gave the same answer and my response was that although... the legislature... including the local officials, it certainly doesn't mandate them to do so. We mandated it on a state level, I think we ought to mandate it on a local level, that's my opinion.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I had promised myself to restrain my urge to speak for a few days, but Mr. Gravel seems to have a genius for bringing out the necessity for remarks on my part. First of all, I think his remarks about the D.A.'s being excluded from the Drew amendment are totally erroneous. As an assistant district attorney, most of my compensation is paid by the State of Louisiana. I am quite sure that any reasonable interpretation would include me as either a state employee or state official or both. I would thing the same would be true of the district attorneys who are also paid by the State of Louisiana for the major part of their compensation. So, let's get rid of that issue, but much more importantly was the remark about the fact that why haven't the district attorneys done anything about all this public corruption in the State of Louisiana? I wonder if Mr. Gravel's memory is so short that he forgets that in his own home parish of Rapides, his good friend the district attorney, Ed Ware, successfully prosecuted public corruption of a major nature in the city of Alexandria and, of course it is necessary to institute a prosecution that there be official investigation that charges be made, and that those who are accused be accorded all of these due process rights that we have had so many tears shed over, up here at the rostrum for the last three and a half weeks. The questions that I directed, with regard to the committee proposal, were the line of the fact that many public officials in this state have felt that the present Code of Ethics doesn't provide for due process of law. Instead of having a presumption of innocence that you have a presumption of guilt unless you prove your innocence, and that the present Code of Ethics has operated far more as a tool of political harassment than it has to give the public any meaningful insurance of ethical conduct in public office. I would submit to you that public morality is a reflection of private personal morality. If you are moral and ethical, privately and personally, you will conduct your office ethically. If you are not personally an ethical man, all the codes of Ethics in the world will not make you so. I would like to point out to you that the very true saying "That the road to hell is paved with good intentions." The road to tyranny may very well be paved with good intentions also. I cannot, in my mind, imagine a potentially more powerful tool for a... Ethics Commission appointed only by him, available...

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doing down in your parish that are not right. I don't know if they are crimes but they may be unethical." Now think about that a little bit before you vote. I think if you do, you will support the De Blieux, Fayard, Drew and Duval amendment as a common sense approach to this problem.

Questions

Mr. Gravel Mr. Burson, just to make it absolutely clear. As far as a district attorney is concerned, he is actually paid part by the state and part by the police jury. Isn't that correct?

Mr. Burson A major...the major portion of his compensation, in most cases, is by the state.

Mr. Gravel The same thing is true of the assistant district attorneys, part is paid by the state, part is paid by the local governing authority, the police jury.

Mr. Burson I would say, in my case, ninety percent of it is paid by the state...

Mr. Gravel How much are you paid as an assistant district attorney?

Mr. Burson Mr. Gravel, I would be glad to file my income tax returns in the record of the convention when you file yours.

Mr. Gravel No, no. I'll be glad to file mine anytime, but I'm asking you in all fairness and seriously, if you get ten thousand dollars as an assistant district attorney from the state, how much do you get from the parish?

Mr. Burson In my case, I think the compensation from the parish would be about seventy-five or eighty dollars.

Mr. Gravel Well, that's not ninety percent then, is it?

Mr. Casey Just a minute gentlemen. Mr. Burson has exceeded his time, sir. I'm sorry, gentlemen. We have to follow the rules.

Further Discussion

Mr. Abraham Ladies and gentlemen, I have no quarrel with Paragraph B and C of this particular amendment. In fact, I will vote for these two paragraphs. I will agree that the language could be and probably is better than what we had proposed in our original proposal, but I cannot in good conscience say that Paragraph A is a good paragraph. How can anyone say, how can I single out one class of people and say that you are going to abide by a Code of Ethics and then tell another class of people, well you don't have to abide by this Code of Ethics. Either you are for ethics in government or you are not. You are for it at all levels. This is about like saying that I'm for motherhood, but I'm only for motherhood for women between age thirty and forty but not between twenty and thirty. Now, I can ask a question a while ago that this does not prohibit the legislature from passing an act which will include local government officials. What are we doing when we pass this amendment as it is, and then hope maybe that the legislature is going to pass an act which will include local government officials. All we are doing is passing the buck. We are afraid. We are saying in effect that we are afraid to take a stand on this issue. We are afraid to face up to our local officials. We are just going to slough that off to the legislature and let them take care of doing this thing. I just can't see how we can stand up here and argue the case that we want a Code of Ethics for one class or one group of people and not for the other. Good government is good government. A Code of Ethics is a Code of Ethics. It applies to all

public officials and employees of the state and its political subdivisions. I just ask which of you people can say that you are not in favor of good government at all levels of government?

Topic: Ethics

Mrs. Warren Mr. Abraham, this is a question I wanted to ask anybody. A person receiving money from the state can be either a state employee or city employee? Now you got to be either one or the other one, which one would you be? You are getting money from both the state and you're getting money from the city or the parish. Now, how do you...what category do you put these people in?

Mr. Abraham There is...you are a public employee, Mrs. Warren, whether you are a city or state, if I understand what you are trying to get at.

Mrs. Warren Right. But they are saying they don't want the local or the parishes to come under the same Code of Ethics as the state officials come under. So, I'm trying to find out what is the distinction if you're getting money from the state and you don't want the state to have anything to say about it.

Mr. Abraham In my eyes there is no distinction. You are a public employee and you should all be governed by the same rules.

Mrs. Warren It's all right to trust the legislature when decisions affect somebody else but when it affects me then the legislature is bad. Is that true?

Mr. Abraham I'm not sure that I understand what you're driving at, Mrs. Warren. I might say this, that I have an amendment coming which tracks this exact language except for Paragraph A; it's going to apply to all officials of the state and its political subdivisions.

Mr. Champagne Mr. Abraham, don't you agree though that the best way to do this is maybe to adopt this and then come back and adopt the other one? If you shoot for all, you may get nothing.

Mr. Abraham I cannot in good conscience vote for something that's only half way...and say in effect, I am saying I approve of this and do not approve of it for the others.

Mr. Duval Well, I realize your intentions are good, but who's going to administer the Code of Ethics as to local officials and employees?

Mr. Abraham This is one reason why I understand that the convention did not like our language that we had and are willing to leave it up to the legislature to provide for the Board of Boards of Ethics and their powers and duties.

Mr. Duval But the way you have it is it's conceivable that a Code of Ethics is going to be administered by the state employees or state officials are going to be administering a Code of Ethics as to local officials and what does that do to home rule?

Mr. Abraham I'm going to leave it up to the infinite wisdom of the legislature to provide for this type of thing, since it does pass the laws which apply to all types of home rule anyway.

Mr. Duval Thank you.

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I stand in opposition to the amendment before us now. I'm looking real hard at Abraham's amendment, coming up later. Thank you very much.

Topic: Ethics

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Board or Boards of Ethics, just that simple and that is as simple as it should be in our constitution. It will leave broad flexibility to the legislature. It can cover local and state officials. It will determine how and what qualifications should be held by the appointed or elected members of the board. It can tell how many members; it can leave up to the legislature about how many members will create this board or constitute this board; it can tell...leave it up to the legislature to say what to do with any decisions that are made by the boards. So, let's leave it as simple as that and leave this flexibility or all of the details or all of the mechanics or all of the powers up to the legislature. In the interpretation of this amendment, the legislature can say that it does not say that we cannot provide a Board of Ethics for local, parochial and state officials, but it can provide for a Code of Ethics for local and state officials; its, strictly left up to the legislature. I hope when this does come up for consideration, that we will adopt just such an amendment. We can eliminate an awful lot of confusion, frustrations or legal technicalities. Thank you.

[Reverend Stovall introduced.]

Closing

Mr. De Blieux Mr. Chairman, ladies and gentlemen, I'll try to make this as brief as I possibly can, but I want to answer some of the arguments that have been advanced here against this amendment. First, let me tell you this---there is nothing in the constitution, so far, that would prohibit the legislature from enacting a Code of Ethics, nothing whatsoever. But, there is nothing in the constitution so far that would force the legislature to enact a Code of Ethics. That's what this amendment is and that's what this section is all about; it's to mandate the legislature that you shall enact a Code of Ethics. If you are for a Code of Ethics, you are going to vote for this amendment because that's all it means. Now, why...let me ask this question. Why do we say state officials and state employees, because they have jurisdiction usually statewide or a large portion of the state connected with the state some way, some form. People don't know the unethical conduct of their state officials nearly as easily as they do their local officials because they are not that close to them. There is nothing, nothing in this amendment that would keep the legislature from enacting legislation in regard to local officials. If somebody comes up with an amendment to include local officials, I will support it, but let's seize and show that we are for a Code of Ethics and adopt this. I say this to Mr. Abraham. I say this to Reverend Stovall, Mr. Roemer, Mr. Gravel and all of those. If you are for a Code of Ethics, you can still amend this if you want to put the local officials in it and I will support it, but let's show you are for a Code of Ethics first, by voting for this amendment and giving the legislature the authority to put teeth into a Code of Ethics to make it work. I believe we agree upon the principles. We should go ahead and support this amendment and, therefore, show the state that we are for having good state officials and then we can come back and add the local officials if you so desire. But let's start out with the state officials first. I ask your approval of the amendment.

Questions

Mr. Jenkins Senator, one thing that I don't understand is why we need a section like this in this constitution. Isn't this simply a creation of another board, another agency which the legislature has the complete power to create and which already exists, in fact, under our statutes?

Mr. De Blieux Mr. Jenkins, you as a member of the legislature know that, but as you may not know--

back when you were a youth--we had a civil service that was legislative. It was repealed, there is nothing to keep the legislature from repealing one if there is no mandate that they shall provide one, and that is what we are having. We are commanding the legislature to provide for a Code of Ethics. Now, that's it in a nutshell.

Mr. Jenkins With regard to your particular amendment which leaves out the local officials, you know when a lot of us were elected to this constitution we thought that...we were afraid that the convention might be dominated by the governor. But, haven't you noted in the consideration of the powers and in the consideration of district attorneys' powers and in the Bill of Rights consideration, in this amendment that you are bringing forward and in the local government article, sort of a sinister influence by the court houses around this state from the district attorneys down, to have an inordinate amount of influence to give them special privileges and special exemptions in this constitution?

Mr. De Blieux I can't say that I have noted that. Mr. Jenkins, I have had some times that I disagreed with people, but I never have come to that conclusion that there is a sinister effort on anybody's part.

Mr. Champagne Senator De Blieux, would you agree with me that these people who say, "I want all or none at all" are going to end up with nothing at all?

Mr. De Blieux That's what I'm afraid of, Mr. Champagne. That's exactly what I'm afraid of...I feel like there is more of an effort to kill it than there is to vote for it.

[Reverend Stovall introduced.]

Point of Information

Mr. Rayburn Either I'm confused or someone else is, it's my opinion that Article XIX, Section 27 of our present constitution says the Louisiana Board of Ethics for state elected officials...the legislature shall establish a board. The statement has been made at that microphone that there was nothing in the present constitution about a Code of Ethics.

[Amendment introduced. Mr. Jenkins introduced.]

Amendment

Mr. Poynter Amendment No. 1 [Amendment introduced], page 1, need to now add the language, "Strike out convention floor amendment No. 1 proposed by Mr. De Blieux and others and adopted by the convention on today," and delete lines 12 through 23, both inclusive, in their entirety and insert in lieu thereof the following:

"Section (A) The legislature shall enact a Code of Ethics for all officials and employees of the state and its political subdivisions. (B) The Code of Ethics shall be administered by a Board or Boards of Ethics created by the legislature with such qualifications, terms of office, duties, and powers as provided by law.

(C) The decisions of the board shall be appealable and the legislature shall provide the method of appeal."

Explanation

Mr. Abraham Ladies and gentlemen of the convention, we have just voted in favor of a Code of Ethics. We are in agreement that we do want a Code of Ethics and a Board of Ethics. All my amendment does, it exactly tracks the language of the De Blieux, Fayard, Drew, Duval amendment. But all it does is changes paragraph (A) to include not only state officials but all local political sub-

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Ms. Zervigon Yes, we do.

Mr. Lanier Is it working well?

Ms. Zervigon We don't know that, Mr. Lanier, because there's never been a complaint under that Code of Ethics. I very much doubt that the people who haven't been stealing from the city, haven't been stealing from the city because there's a Code of Ethics. In fact, quite the other way around, I've read it and it gives me all kinds of groovy ideas for things I could do that I have never thought of before.

Mr. Lanier Let me ask you this, does it provide for a Board of Ethics for the city of New Orleans?

Ms. Zervigon It provides that the Civil Service Commission shall act as a Board of Ethics, and it seems to me that the legislature could provide likewise by statute.

Mr. Lanier Do you feel that a statewide Code of Ethics applicable to all public officials could be administered well on the local level by a local Board of Ethics?

Ms. Zervigon I believe that if it's going to be administered well, it matters not where it's going to be administered. It could be administered well or ill from Baton Rouge, well or ill from New Orleans, and it really depends a whole lot more on the make up of the commission itself.

Mr. Lanier In your opinion, do you think that it would be better administered in New Orleans by a New Orleans board or by a state board?

Ms. Zervigon As I said before, Mr. Lanier, it depends a whole lot more on the personalities of the people that make up that board, and the code that is written for them to administer, than it does where they reside.

Further Discussion

Mr. LeBlau Mr. Chairman, and fellow delegates, I'm not going to comment one way or ask you to vote one way or the other against this proposal, but I just had some thoughts that I thought you might be interested in. I was in the legislature when the present Code of Ethics was passed. In the time that I've been there I don't know of one single instance in which it has accomplished any good. To me it certainly hasn't straightened out any politician who intended to be crooked in the first place, and of course it applied only to statewide public officials, the legislature, and state employees. To me, and I voted for the Code of Ethics, but to me, and if we put this language in the constitution, it's just an effort to white-wash the public. I can see no good that will come out of it. You vote to put it in the constitution, that's good, but I'll tell you this: One office that has done more good to straighten out corrupt politics in this state is the legislative auditor, and I think the legislature realizes that because in the past we have increased the budget for the legislative auditor in order to provide more employees, a better staff in order for him to audit the books of the various local and...now, I believe municipalities are included in it too. But, to me the legislative auditor has done more to straighten out crooked politics in this state than the Code of Ethics or the Ethics Commission. Thank you.

Further Discussion

Mr. Womack Mr. Acting Chairman, members of the convention, when you look back at this final document that's going to be submitted to the people, and I find now that this proposal includes local governmental bodies; I go back and check my District Twenty and I find that there is approximately one hundred and fifty people directly covered by this.

I may take a very active position when election day comes on this final proposal, but nobody can offset or nothing can offset one hundred and fifty people out working in their respective communities, working at the church, working at the school, wherever they are, on a daily basis, so called "down grading" what we've done, so we need to keep that in mind. I wish I had about thirty minutes because I am the only authority in the State of Louisiana on the Board of Ethics. Those of you that's been around know what I'm talking about. It was used in my particular case as the most damnable thing that was ever done. It was broken up because I had a suit filed and served a seven day notice that we were going to court, and they went to work in a hurry because they didn't want to face court. This is how honorable a Board of Ethics is. I proposed at that time that the King James version of the Ten Commandments was probably the best Code of Ethics we could have and they said "Oh, that's sacrilegious. You're not going to hem up everything." We need in this case, like in all of the others a broad term that gives the authority to the legislature to act in the field. Like Mr. Munson says, we say the legislature has got to pass a law, and when I sit in the legislature as a member and they come up with one I don't like, I can tell you I'm not going to vote for it. Now, you can brand it "motherhood" or be blamed for being in favor of prostitution if you want to, but I'm still not going to vote for it if I don't think it's in the best interest of the future of this state and the people I represent. I Conway LeBlau brought up something a few minutes ago; our legislative auditor has moved into the field of checking out every complaint they've gotten. By the same token it goes a little further than he had said. We have a legislative audit committee that is following up on the legislative auditor's reports, and they're coming in--if the police jury has been criticized for an item, they're sending out a questionnaire; what it is, how it is, who did it, has it been corrected, what steps have you taken to see that this will not recur. These are the things that's going to do the job. We move up here and say well, one day we trust the legislature to the nth degree and the next day "well, trust you, but everyone of you had better be watched." I just wonder how far we're going to go in questioning the integrity and keep in mind that when you come up with a Code of Ethics and a commission, all they've got to do to hurt you is issue a news release that they are investigating you for wrongdoing and let it hit the paper every day. Now, getting back to the Board of Ethics---you know why no one was charged in the Board of Ethics? There would have been a hundred or a thousand charges if it would have been left like it was introduced by the "do-gooders" and the good government people. But a simple little amendment was added in the Senate that says "that individual must file a written charge against an elected official, and if he does not substantiate that charge in court then he is subject to imprisonment and fine." That stopped the "do-gooders." Had it not been for that amendment, it would have been hard for anybody to be re-elected. The people keep in mind...and I'm just not in any hurry to vote on this. I'm of the opinion that this whole thing may be looked at a long ways because we've got to consider the two or three approaches. Number one, what's good; number two, what is a fallacy; and number three is what we can get by on local government and sell without creating the Spotted Frog. As I go along day by day, I can see us giving a lot of people a lot of room to say "I object," and along the line we better give them a lot of reasons for saying "I'm for it." Thank you.

Further Discussion

Mr. Willis Mr. Chairman, fellow delegates, I hope you do not find it poor endurance to hear me. By your leave and fervor, I further hope to merit the time. I ask you to yield your minds to help me caress what few should oppose, a directive that

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the previous question.

[~~Previous question ordered.~~]

Closing

Mr. Landry Mr. Chairman, ladies and gentlemen of this delegation, you have been very kind to me in the past and for that I am very appreciative. You afforded me a bit of undeserved publicity which I appreciate, especially for my grandchildren who someday will read that their grandfather participated in a convention where people gave attention. This is a very difficult time to appear, but I accept the challenge. I accept the challenge because of the fact that it is difficult. I now realize what the problem is. You know, I have tremendous faith in the fact that the "Henry Huddle" solves many problems miraculously. I have come to this podium and stuck my head in to find out how these people do this job. You ought to come in and find out how well...they did a job a moment ago where you approved of it. You approved of it to the tune of seventy to forty-four. Now you've already spoken. I've come here to remind you that you are in favor of a Code of Ethics. You spoke beautifully in a loud voice, seventy times. Now all you need to do is reinforce what you said a moment ago and not renege and add one word, and you've all spoken to it, and the word is "all." Really and truly, my people need this. We have had this conflict and we need it badly. I'm asking you in all sincerity, put this Code of Ethics into this constitution, and let me see how many green lights, not just a majority, but show me a super majority. Thank you for this privilege.

[~~Previous vote ordered. Amendment adopted 101-14. Motion to reconsider tabled. Previous question on the entire subject matter ordered. 4-1. Motion to reconsider 100-15. Motion to reconsider tabled.~~]

Point of Order

Mr. Burson I rise to be recognized for the floor to debate.

Mr. Casey Mr. Burson, I cannot recognize you because the previous question was called on the entire subject matter, if you may recall.

Mr. Burson Then we don't have to vote again, is that correct?

Mr. Casey We do have to vote again because theoretically, that was in the form of an amendment, let's say.

Mr. Burson Point of order. If this is an amendment to a proposal that we have already adopted then it seems to me you would have to call that proposal off the table where it now rests in order to add anything to it. Is that correct or incorrect?

Mr. Casey No, Mr. Burson. First of all, the Executive Procedure was not laid on the table. In fact, our procedure has been, as you know, that we are not laying on the table any proposal. The only thing we are laying on the table are sections adopted under each proposal.

Mr. Burson Very well, I have, being prepared, a section to this proposal...a new section.

Mr. Casey Mr. Burson, I have already ruled. I apologize to you. I'm trying the best I can to preside, but the previous question has been called on the entire subject matter. The only entire subject matter that I know of is Committee Proposal No. 22.

Mr. Burson I have a new section to that committee proposal being prepared. We've had new sections to every other committee proposal proposed.

floor amendments. That is what I have being prepared, and the Chair has ruled time and time again that it was permissible to have new sections to committee proposals proposed as floor amendments and that is what is being prepared right now.

Mr. Casey Let me just have a Casey and Poynter Huddle just to determine what is the correct parliamentary procedure here.

Ruling of the Chair

Mr. Casey Delegates, delegates, please let us have your attention just a minute. Under the rules, the Clerk is the official Parliamentarian of the Convention. I will ask him to explain his ruling on the request of Mr. Burson.

Mr. Poynter Well, Mr. Vice Chairman, you've got to do the ruling. I'm the Parliamentarian, but the rules say that the Chair has got to make the ruling. But, as I would appreciate the rules of the Convention, they do require a vote as follows: on each section of every proposal and on the proposal itself, as well. So, hence, I think it was necessary as you just did, to vote as I would construe that vote, a vote to adopt Section 1 of this proposal. A vote would now be in order to adopt the entire proposal—an amendment which would propose a section, in my appreciation, and additional section to this proposal, if germane, if germane, would be in order unless the previous question on the entire subject matter. Now, it would have been my appreciation, and the Chair might rule otherwise, that the previous question on the entire subject matter would have had to been confined to the consideration of Section 1, just adopted, Mr. Chairman.

Mr. Casey Now, Mr. Juneau, why did you rise, sir?

Mr. Juneau To clarify the point, Mr. Chairman. I would move for the previous question on the entire subject matter, proposal, excuse me.

Mr. Casey That's in order.

Mr. Juneau now moves the... just a minute. What was that, Mr. Burson.

Mr. Burson My motion was that I be permitted to introduce a new section, and I want a ruling from the Chair on that point before you go on to recognize someone else for any other motions. Now, is a new section by amendment to this committee proposal, just as we've had to every other committee proposal, in order or not? Would you rule on that, please?

Mr. Casey Mr. Burson, the Clerk has rendered his interpretation...

Mr. Burson I'm not interested in what the Clerk's interpretation is; I'd like your ruling.

Mr. Casey Now, just a minute, Mr. Burson. Don't get excited, we're going to proceed in a very orderly fashion. The Clerk has rendered his interpretation, and the Chair will rule accordingly that a request on your behalf to offer a new section is in order. However, Mr. Burson, I just wish to proceed further that Mr. Juneau has risen and has made a motion to call the previous question on the entire subject matter...

Mr. Burson Which would, I believe, introduce a new section.

Mr. Casey My interpretation of his motion to call the question on the entire subject matter would preclude any further offering of any other sections. That it is my understanding that his motion for the previous question is on the entirety of Committee Proposal No. 22.

Mr. Burson Well, I would like to know, would that be, any pending amendments thereto?

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Mr. Burson. The consideration of any further amendments.

Mr. Burson. Therefore, on all future committee proposals now, including local Government or any other proposal that we have, would it be correct that if I get up after the committee proposal is through and I move the previous question on the proposal, that anyone who has amendments proposing new sections to that proposal would be barred from submitting them? Is that your ruling? Because that's what the effect will be.

Mr. Casey. If the motion passes, that's all I can say, Mr. Burson. We have to cross each bridge as we come to it.

Appeal from Ruling of the Chair

Mr. Burson. Well, I just wanted all these other delegates in here to realize what they were doing to themselves later on in this convention, if they uphold this ruling, and I appeal the ruling of the Chair.

Mr. Casey. Mr. Burson, all I can tell you is we have to cross each bridge as we come to it. I don't know what's going to happen on all future committee proposals.

Just a minute. Wait. We're going to ask Mr. Burson to go back to the mike now. He's appealing the ruling of the Chair, but I'm not sure what the appeal is on.

Mr. Burson. This appeal is against the ruling of the Chair, which is to allow amendments to be presented at the desk.

Mr. Casey. We will ask the Clerk, as Parliamentarian, to make an explanation.

Mr. Poynter. Mr. Burson, the Chair would have to announce, before the motion to the previous question is voted on, that there is one amendment at the desk. However, that amendment has not been offered. The motion was made. Do you...

Mr. Burson. Did I not tell you that that amendment was being prepared before the motion for the previous question? Will you deny that?

Mr. Poynter. I agree with you totally, sir.

Mr. Burson. Well, haven't we, throughout this convention, whenever someone said they had amendments being prepared, allowed them to be prepared and presented? Haven't you routinely informed the convention when amendments were being prepared?

Mr. Casey. That has been done, Mr. Burson, and we are following the rules in doing that. I think the convention is fully aware that you have amendments being prepared, and in voting on the motion for the previous question, I would imagine that the entire convention would be aware of the fact that you have an amendment being prepared. I don't...

Mr. Burson. I don't want to say that the motion was made.

Mr. Casey. Just a minute, gentlemen. No need to say that. Let's move on to the next question.

Okay, now, a motion has been made by Mr. Junneau that he moves to call the previous question on the...

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Mr. Poynter. Mr. Burson, please correct me if I...

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Mr. Gravel: A point of order, Mr. Chairman. Regardless of all this that I think is clearly before the convention, isn't the time when we are that is now before the convention, the appeal of Mr. Burson from the ruling of the Chair? If it's in order to do it this way, I move the previous question on that particular matter so that we can dispose of it.

Mr. Casey: Well, that's nondebatable answer, the Clerk indicates. The...

Mr. Gravel: How do we ever get to it, through?

Mr. Casey: Well, that's what we want to do right now.

Mr. Anzalone, why do you rise, sir?

Mr. Anzalone: Mr. Chairman, you stated a few minutes ago that at the time Mr. Burson made his motion that there was only one amendment on the table or being prepared at that time. Is it not a fact that when Mr. Burson announced that his amendment was forthcoming that Mr. Gravel did say that I do not wish to withdraw my amendment? Therefore, there were two.

Mr. Casey: He did say that, but also Mr. Arnette had one, I think, if I'm not mistaken.

Now, let's vote on the appeal. Let's get in motion here, now. Come on.

Clerk, will you state the question so that it will be quite clear to all delegates before we vote?

Mr. Poynter: In appreciation of your rulings now, Mr. Chairman, is that the convention has voted to adopt Section 1 which is presently the only section contained within this proposal. The motion has been made for the previous question on the entire subject matter which would now be the adoption of Committee Proposal No. 22 containing that one section. Mr. Burson has an amendment which is now at the floor. The Chair has ruled that the effect of adoption of the motion of the previous question would be that that amendment could not be offered and it would cut off discussion, debate and would vote directly on Committee Proposal No. 22, arguing that he has a right to offer the amendment that was on the desk but not introduced. Mr. Burson has appealed the ruling of the Chair, that the effect of carrying the motion for the previous question on the entire subject matter would preclude the offering of the amendment.

[Motion for previous question: 45-66.]

Point of Information

Mr. Burson: In the event that the motion for previous question loses, does that mean the amendment will be considered?

Mr. Casey: That's absolutely correct. It would be in order.

[Motion for the Previous Question of the entire subject matter rejected: 45-66.]

Amendment

Mr. Poynter: The copies of Mr. Burson's amendment are being distributed at the present time; they have just arrived. It's drawn Section 1, it should be Section 2. "Code of Ethics; Local Officials and Employees."

Section 2. Any code of ethics for local officials and employees shall be administered by a local board of ethics."

Explanation

Mr. Burson: Mr. Chairman, fellow delegates, first of all let me express to you my sincere appreciation to the majority that voted to permit me to submit this amendment. Let me assure you that I will

continue to do it. I have done to date to permit you the opportunity to present your amendment. I think that doesn't need any explanation. It says what it means. I asked for the Committee Proposal No. 22 when it passed. I certainly can't see where any honest public official would have any objection to having a local official Code of Ethics prescribed by the State Legislature. That doesn't disturb me at all. However, I do think that any such code should properly be administered by a local Board of Ethics. It seems to me that if you decide otherwise, you are leaving open the clear possibility that the legislation which is adopted could be similar, if not identical, to the original committee proposal which would permit a complete centralization of Board of Ethics powers over local government officials. Now, there seems to have been a tacit presumption and some of the debate here today that somehow or other, local officials were inherently more suspect than are state officials. Now, I ask you, is that belief born out by the record? I ask you further, is not that belief belied by the fact that as other speakers have pointed out, we have not had a deluge of ethics complaints. It simply seems to me that regardless of the character of the local governmental unit involved, that a Board of Ethics chosen from the parish or the city involved and citizens thereof who are not officials themselves, should be, don't you think, at least as capable of judging on the validity of ethics allegations in their own local communities as a board headquartered here in Baton Rouge that may not know a thing about the local community. It seems to me entirely consonant with the regard for home rule, the regard for maintaining local government at the local level, that I think the majority of the delegates to this convention want to pass this proposal. It seems to me that if you reject it, you are leaving the way open for a dangerous and unwarranted centralization of power in this area, and one that will inevitably be subject to the kind of abuse that other delegates have raised here today. I would also point out to you that there are areas in this state, I'm aware, certainly, of New Orleans, as a case in point, where they have a local Code of Ethics administered by a local board at the present time. This amendment would be entirely consonant with that situation. I will answer any questions.

Question

Mr. Arnette: I've got a couple of questions here, Jack. First of all, you say that "any code of ethics for local officials and employees," does that include the State Code of Ethics? In other words, the one we just made provision for.

Mr. Burson: Yes, sir. In other words, what the effect of this amendment would be, that whenever the legislature sets up a code of ethics for local officials, they would have to also, at the same time, provide for a local board of some sort to administer it, and not have what I would deem to be an inherently impossible situation where you would have one central Board of Ethics trying to administer complaints from sixty-four parishes and [...] knows how many municipalities across the state. I think as Mr. Womack pointed out, that's...

Mr. Arnette: So what you would be doing... So what you want to do is have the legislature force a local board of ethics on a local government group such as a parish or municipality. You are going to have the legislature set up that board for a parish, and you are going to have that board that's set up by the legislature for a parish to do that particular thing? I can't understand that, Mr. Burson.

Mr. Burson: I'm not saying that the legislature would necessarily set up the board, but however the scheme was devised, it would have to include a local board of ethics. The legislature could leave the set selection of that board to any number of methods.

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Mr. Roemer: Well, it is important that the State Code of Ethics be applied to the local board of ethics. Then all that the local officials or anybody else who wants to get around this needs to do is just simply not set up a board of ethics and they would not have anything to do with the State Code of Ethics.

Mr. Burson: Well, Mr. Arnette, it seems to me that that presumes bad faith on the part of two groups of officials--the State Legislature and the local government. I'm not willing to make those joint presumptions.

Chairman Henry in the Chair

Mr. Roemer: Jack, as I understand this, you don't limit this to one board per parish, do you?

Mr. Burson: No.

Mr. Roemer: We could have a board of ethics in each municipality or whatever divisions we want.

Mr. Burson: Yes.

Mr. Roemer: So, instead of having one board in every sixty-four, we could have a thousand and

the same code.

Mr. Burson: Yes, but you would have to administer the same code.

Mr. Burson: I don't know what the number of municipalities is in the state.

Mr. Jenkins: So, Jack, now if we take a typical Louisiana parish, it has about five or six municipalities in it. Each one of those municipalities, under this, would really have to have a board of ethics because it wouldn't be local as to that municipality if it were a parishwide board. Isn't that true?

Mr. Burson: Yes.

Mr. Jenkins: So, you would also have to have a parish board of ethics for the school board and the police jury, or any other governing authorities, wouldn't you?

Mr. Burson: Yes, sir.

Mr. Jenkins: Then, I suppose as to special districts, you might even have to have special boards of ethics for them--such as multi-parish districts, things of that nature. Would you have to have special boards for them too?

Mr. Burson: Well, it seems to me that could

Mr. Munson: Well, what I wanted to ask, Mr. Roemer had already asked and Mr. Jenkins brought it out again. I just wanted to ask the delegate if he had any other questions about the code of ethics we are going to have? I really think it could be three or four thousand.

Mr. Burson: Yes, but you would have to administer the same code.

Further Discussion

Mr. Roemer: Well, I think it is important to have experience in the field of ethics. I think there is a tremendous confusion in the concept of ethics. It is not a simple matter to set up a board of ethics and have it work.

that code being applied to all state and local officials. I think it is important to have experience in the field of ethics. I think there is a tremendous confusion in the concept of ethics. It is not a simple matter to set up a board of ethics and have it work. I am astounded at legislators who are here speaking against matters and voting for them in their own confusion. I come before you only to try and clarify that matter. Ethics are personal matters. Let me give you an example as to a situation where ethics exist in the medical profession. We have an ethical code. We have ethics committees at every level. These committees are multiple, but the most important ethics are the personal ethics. You cannot legislate morality. It's been clearly stated that way. Sections (B) and (C) of the amendment as adopted by this convention are dangerous. It's been pointed out by legislators that people will vote against the constitution on this basis. If you do not vote for the Burson amendment, which I am compromising on and speak in its favor, if this is defeated, I suggest you defeat the entire section at this time. The Gravel amendment is a good amendment. It states exactly what I think all of you and all of us want to say; and that is, that we prohibit conflict between public duty and private interests, and we apply this to all officials of the state and the employees, and we leave this up to the legislature to decide. As the present time, Sections (B) and (C) call, and I call to your attention (C), which is dangerous, the decisions of the "board." Which board is that? Is this the superboard that will supervise all ethical matters and incriminate local officials unnecessarily by a superboard appointed group that may be under the dominion of the governor or even the legislature. This is a dangerous situation. It's the implementation of the ethics that is the problem here. It is the manner in which this body has voted to attempt to implement ethics. One cannot legislate this sort of thing, and I urge you to accept the Burson amendment. Hopefully defeat the present decision of this body and reverse yourselves and go to the Gravel amendment. Mr. Gravel is seeking simply more power by acceptance of the Abraham amendment, a dangerous power which will reflect in the state officials that are in a position to defeat this constitution. As already spoken by Mr. Monack, Delegate Monack, there are enumerable people that would misinterpret. If your mind is made up, I cannot, of course, convince you, but I urge you not to act with either haste or emotion, to accept the Burson amendment, to reject the entire Abraham resolution and accept the Gravel proposal. At the present time I speak in favor of the Burson amendment as a compromise to the ethical problem before this group.

Mr. Anzalone: Mr. Chairman, if you will, count slow because it may take twelve. But the only thing that I want to say to this convention, when you worry about numbers of local boards of ethics, just let me say to you one thing--that if you put a centralized board of ethics into power, and you put everybody on there from the city of New Orleans, and they went to Shreveport to govern ethics, I'll tell you what--Shreveport would be a part of Arkansas in about two weeks. If you did the people from Shreveport and brought them to New Orleans, they would be a part of Louisiana in about two weeks.

ROLL CALL

Let us all bow our heads, please.
back to your jobs this morning. We ask that you
will go with us and guide us and help us to do the
things that we should do. Bless each and everyone
of us assembled here. Bless us and keep us, in the
name of Jesus and for Him.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

READING OF THE PROPOSAL

Mr. Poynter Committee Proposal No. 17 by Delegate
Perez, Chairman on behalf of the Committee on Local
and Parochial Government, and other delegates and
members of that committee:

A proposal making general provisions for local
and parochial government, levee districts, ports:
the financing thereof and necessary provisions with
respect thereto.

Mr. Perez Mr. Chairman, and ladies and gentlemen
of the convention, the chore of the Committee on Local
and Parochial Government has been a lengthy and
tedious one because of the fact that this
committee had assigned to it over one-third of the
total length of this constitution. I'm not much
on statistics, but I did ask the staff to make
a computation of the length of the articles
assigned to this committee and to the length of
the committee proposal. According to the staff,
we were assigned one hundred and forty thousand,
eight hundred and ten words which has been re-
duced by the Local Government Committee to seven
thousand, two hundred and twenty-seven words. We
were assigned two hundred and seven out of five
hundred and eighty-three pages in the constitution
and we have reduced the length of that article to
the equivalent of sixteen pages, twenty-eight pages
as printed, but the equivalent of sixteen pages
as the present constitution is printed.

I think, ladies and gentlemen of this convention,
we have come to the point of determining whether
we truly want to extend more home rule to local
government or whether we will extend mere lip service
to the increase of home rule. We all know that the
trend in years gone by was to put all authority in
our national government in Washington and how over
the many years, in recent years, we have come to
the conclusion and realized that government which
is closest to home is the best government. And
there are many reasons for it. We on the home level
know the problems best, and we are in a better position
to solve them. We have seen in recent times
the effort on behalf of the national administration
to extend more home rule by providing revenue sharing
on a national level, and we have seen a great up-
surge in the feeling and sympathy of the voters to
return government closer to the people. In our de-
liberations, we have strengthened greatly the execu-
tive department through the consolidation, or making
provisions for consolidation. We've strengthened
greatly the legislature in including the extension
period. We have extended the authority of the
judiciary, and particularly the Supreme Court, in
its administrative control over our district courts,
in the 1921 Constitution.

protection so that the people back home can, to
the greatest extent possible, manage their own
affairs. The article on local and parochial

government; finance of local government; levee
districts and ports.

With respect to the financing of local
rent, as many of you know, we have met with
committee, the convention Committee of Finance
Revenue and Taxation, and we hope to be able
meet with them again before this provision in
local government is brought on the floor.

I'd like to suggest at this time that we be
given an opportunity, sometime later during the
week, to have a joint meeting of the Finance
Committee and Local Government Committee so that
we can attempt to iron out any problems that
might exist between the Finance Committee and Local
Government Committee with respect to finance.

To give you just an idea of the problems facing
the Local Government Committee and the results
of its work, I might just read to you some of
the various boards and agencies which have been
either totally eliminated, or the details of which
have been eliminated from the present constitution.
They are twenty-eight in number; such agencies as
the Board of Liquidation of City Debt in New Orleans,
the Sewerage and Water Board of New Orleans, the
Public Belt Railroad Commission of New Orleans,
the Upper Pontalba Building, the Vieux Carre Com-
mission, the Fourth Jefferson Parish Drainage
District, the Community Center and Playgrounds
Districts in Jefferson, Sewerage Districts in
Jefferson, Public Improvement Districts in Jefferson,
East Baton Rouge Parish Recreation and Park Com-
mission, Public Improvement Districts in St.
Charles, Community Center and Playgrounds District
in Calcasieu, the Louisiana Stadium and Exposition
Districts, the Bayou Lafourche Fresh water District,
Iatt Lake Water Conservation District, the Board
of Commissioners, Port of New Orleans, Greater
Baton Rouge Port, Greater Ouachita Port, Cado-
choussat Port Commission, Lake Providence Port
Commission, South Louisiana Port Commission, Con-
cordia Port Commission: Avoyelles, Rapides, and
Lake Charles Port Commissions, Port, Harbor and
Terminal Districts, the Sabine River Authority,
and the Levee Boards of Orleans and Ponchartrain.

In my judgment, the Committee on Local and
Parochial Government has performed a Herculean
task of finding a way to adequately provide for
local government and at the same time not over-
burden the constitution with the many details
which now exist with respect to that local govern-
ment...with local government.

I realize that an effort will be made this morn-
ing to recommit the work that was done by the Local
and Parochial Government Committee back to that
committee. That procedure has not been followed
with respect to any of the other work of any of
the other committees. I call the attention to the
fact that all of the delegates were invited by let-
ter from me as Chairman of the Local Government
Committee on August 18 to provide us with any views
that you might have with respect to this article.
I also invite your attention to the fact that
this committee waited until the very last moment
to finally report the committee proposal. I
this delegation with the hope that we will be able
we would have the time to discuss it in the
convention.

when this motion comes to a vote, I
with our business, and if I

Thank you

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Mr. Munson Mr. Chairman, I intend to make a motion in a moment, but first I would like to say a few words to the delegates of this convention.

I think my aim in this convention is the same as the aim of every delegate to this convention. And that is to submit to the people of this state a document, when we complete our work, that will be acceptable and that will be adopted by the people of this state. That has been my desire since the fifth of January, the day as you have heard, I think we have done fairly well up until now. Even though there is some statutory material in the proposals that we have adopted, I'll say, again, I think we have done fairly well. But I do think we have reached the point now, today, where we really have to make up our minds where we are going.

From here we have this proposal on local government, education, revenue and taxation. I believe, and may be one other to consider. I don't want to be any part of spending three million dollars of the taxpayers' money and have it pitched out the window, and I know you don't either. I recognize the fact that the Committee on Local and Parochial Government has certainly shortened very extensively what's in our pre-enfranchisement constitution. I also recognize the fact that during the time I have been in the legislature, most of the reasons for submitting constitutional amendments to the people have been caused by local government. I would say somewhere between seventy-five to ninety percent of the amendments that we've had to submit to our people has been caused by local government. I do not think that the proposal as proposed to us today solves that problem. If you want to know how many kingdoms we'll have in this state if we adopt this proposal, all you have to do is add up the number of municipalities, villages, cities, drainage districts, levee boards, etc. I am an advocate, a strong advocate of home rule and local government. But in my opinion, ladies and gentlemen, this proposal goes much, much further than providing home rule. To make it plain, I think if it's adopted as it is, I think you might as well abolish the Louisiana legislature. That's it, as about how strong this proposal is. I do not want this convention to have to battle it out on the floor of this convention hall for the next two or three weeks, losing our tempers, causing hard feelings. I think there is room for compromise. I think the problems can be worked out; I think the best place to work out those problems is in the Committee on Local and Parochial Government, and for that reason, Mr. Chairman, and the reasons I have enumerated, I would like to now move that Committee Proposal No. 17 be recommitted to the Committee on Local and Parochial Government.

[Motion seconded. Motion carried. Committee.]

Questions

Mr. Perez Mr. Munson, would you explain to me what the difference is between this committee proposal and all of the other committee proposals which we have already considered, where we debated and amended and reamended and amended all over again these various other articles? What is the basic difference? Why should this be recommitted when we did not recommit Legislative, Judicial, executive, or bill of rights?

Mr. Munson Mr. Perez, I respect you and your committee for the work that you have done. I just... I thought I had already given my reasons. I just think that there is entirely too much, or much more statutory material in your committee's proposal than we have had in any other committee proposal up to now. And in the spirit of trying to cooperate and solve the problems that are posed by this proposal, I just think it's best for all of us as a whole to go on to another matter while we try to work this out in your committee rather than on the floor of this convention.

Mr. Willis Mr. Representative, after informal discussion...

difficult and the committee proposal instead of discussing it so that we can make room in our discussion for the compromises which you advocate. Don't you think the proper procedure would be to go ahead and talk business and save that money you talk about and talk discussing this proposal instead of committing it before hand?

Mr. Munson Mr. Willis, I appreciate your suggestion. I am discussing it, and I think I am convinced that we'll all be better off to discuss this proposal in committee, come to some sensible solution, and then come back to this convention for further discussion as we have done with other proposals.

Mr. Willis I appreciate... I appreciate what you are trying to do, but you are trying to do in such short time what it took the committee such long time to do, and you are trying to do it from a procedure which has been followed for four other committees, something which is unheard of, thus far, in this convention. It's a step backwards to my mind.

Mr. Munson Mr. Willis, in my opinion, we will not lose a single day's time for the simple reason we can go on with other business that's already before this convention while this is being done in committee.

Mr. Willis To each his own.

Mr. Bollinger Mr. Munson, did not Mr. Perez and his committee do one thing that no other committee did and that was offer each delegate, in a letter, the opportunity to come before that committee and discuss any differences that we disagreed or didn't agree with in that committee proposal?

Mr. Munson If you suggest that, I will say yes. But I don't personally know that to be a fact. I don't know whether any other committee has done it or not, Mr. Bollinger.

Mr. Bollinger And is it not also true that this proposal was not reported out for a good while, and as Mr. Perez stated, for the reason that he invited each delegate to come before the committee. My point in asking this question is, why do you think now each delegate would go before this committee and bring out all these differences you are mentioning when they never did do it before?

Mr. Munson I'm not suggesting that each delegate go to Mr. Perez's committee. I'm merely suggesting that I think it's so highly controversial, Mr. Bollinger, and has so much statutory material that it can best be worked out in a committee rather than fight it out on the floor.

Mr. Burson Representative Munson, I understand your great concern about this article. When did you finish reading the article?

Mr. Munson Mr. Burson, I'm not Representative Munson; neither am I ex-Representative Munson. I am a former Representative. There is a difference.

Mr. Burson When did you finish reading the article?

Mr. Munson I have tried to wade through it ever since it's been on my desk, Mr. Burson.

Mr. Burson Have you ever appeared before the committee to offer any suggestions as to possible changes in the article?

Mr. Munson No, sir, I haven't.

Mr. Burson Do you intend to do so in the future?

Mr. Munson Yes, sir.

Mr. Burson Don't you think that the committee's suggestions in the form of floor amendments have been done on all the previous articles?

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interests do not want meaningful home rule provisions in this state, and if you vote to recommit this article as now proposed by Mr. Munson, I would take it that this convention does not want meaningful home rule in this state.

Further Discussion

Mr. Lowe Mr. Chairman, delegates to the convention, I rise to also oppose Mr. Munson's motion to recommit this article, and I do so for several reasons.

First of all, I believe that it's a terrible precedent for this convention to take at this particular stage in our deliberations. I can make a comparison to you and that is with Revenue, Finance and Taxation Committee. I believe that we have in that particular committee as many controversial items as you will find in any article that will come before this deliberative body. We voted consistently eleven to eleven, or ten to eleven or nine to ten on many issues that have come up. Half of us have almost agreed that the only way we can get anything out of Revenue, Finance and Taxation is to stop arguing in that particular committee and allow something to come to this floor, because when it does come to this floor, well then it will get a fair hearing. We'll have a hundred and thirty-two delegates that have their own impressions about what should and should not be. What does one do after he goes to committee and does everything that he can do? Under the committee system, you've lost in committee. That's what you've done. But that doesn't bar you and forever that you have the right to come before the whole convention to express your views of what should or should not be in connection with that particular article. So I say to you that if we set the precedent here and now, that we are going to have to follow it again when we come back to Revenue, Finance and Taxation. Many of us in Revenue, Finance and Taxation will have the same stand. Maybe we should not have soft-pedaled our beliefs in a hope to overcome the stalemate that was there. I certainly have many different views than what's coming out of Revenue, Finance and Taxation, and would not want you to believe that when you get that particular article, that we are ready to get it back. We've done that and that we could do. We have attended all the meetings that we could attend, we've had all of the speakers that we could have. There's nothing more that we can do in Revenue, Finance and Taxation, and I am sure that Local Government has done the same.

I see this move as an aim by a group that objects to a theory that Local Government Committee has. And I can appreciate their objection to that theory. But to hold that we are going to sit here and argue twenty-eight pages, a day at a time, and maybe spend one day on each page so that we need to send it back to committee, is utterly ridiculous. What are we going to accomplish after we send it back to committee? We'll probably still have the same number of pages, and if we don't still have the same number of pages, I don't view the opponents to this move as a group that's going to lay down and die. That couldn't possibly happen next week, next month or any time. You know, and I know, that the opponents that oppose this move are a strongly...have a stronger feeling about their...what should be in this article as Mr. Munson and the group that wants to send it back to committee.

So when we get it back, we are going to argue and deliberate over the same thing that we are going to argue and deliberate if we leave it before this group today. I say to you that this convention has been successful because we have a deliberative body that's willing to sit down and stick with it and deliberate hour after hour and day after day. Why should we change our modus operandi right now? What would make us do that—face that all of a sudden we have some issues that everyone doesn't agree with, so, since everyone does not agree with them, we want to send them back. I say to you that we are a deliberative body; we were sent here to deliberate; the committee system has

worked well; there is no reason for us to believe right now that the Committee on Local Government did not work well. I submit to you that since we are a deliberative body, let's deliberate.

Further Discussion

Mr. Fontenot Mr. Chairman and fellow delegates, I would imagine before this discussion is over, probably half of this delegation is going to get up and speak, but I just wanted to throw in my two bits at the same time. Somebody already said there's too much statutory material in this particular committee proposal. Well, as far as I'm concerned there's been too much statutory material in the first four proposals. The section on the Legislative, Judicial, Executive, and the Bill of Rights, as far as I'm concerned, had too much statutory material. But, whenever you get into a specific field as Local and Parochial Government, I think it is justified to have some of the statutory material. If we don't have some of the statutory material in the constitution, then the legislature could run wild on the local governments. I think it's necessary that we need it. It's a shame they have twenty-eight pages, but it's a lot better than you have now in the present constitution. Now, if we're going to start a precedent of recommitting each proposal when it gets up here because it's too long, just think what's going to happen when you get to Revenue, Finance, and Taxation. Just think what's going to happen when you get to Education and Welfare; and as far as Natural Resources and Agriculture, I'm not sure yet how long their proposal is. I would assume it is a little bit shorter than Revenue, Finance, and...well, Education and Welfare, but I think it's a bad precedent. These fields, I think, are just more detailed. You have to have more so-called statutory material in the constitution. I'm concerned about these areas. If you don't have them going to put in, general principles? What kind of general principles can you have on local and parochial government? Some one statement like "the legislature shall provide for the governing of local governing bodies," is that all you're going to put in? I don't think so. I don't think so. I think of this material. I looked at the committee proposal. I think it conflicts in a lot of places with Revenue, Finance and Taxation, but our committee has already suggested that we just defer some of these particular sections that conflict with our committee. I think that if Revenue, Finance, and Taxation could come up with their tax proposal before some of these particular sections in the Local and Parochial Government, I think it's going to work itself out. So we suggested that we just defer those sections in the Local and Parochial Article that conflict with Revenue, Finance, and Taxation. I think that's the answer. Now, Saturday afternoon we worked on it. Well, Friday we got through with the Bill of Rights; Saturday we worked on this Code of Ethics and I was satisfied with what happened. I'm very pleased to announce that the people in my area are very satisfied with what we have done so far. But, Saturday afternoon I picked up a rumor that someone didn't like the Local and Parochial Proposal and that this committee would have to rewrite it. I'm really concerned about this person trying to, when he said he wouldn't get involved in this convention, I'm really concerned with this person now that time is getting short; he's going to get involved in this convention. I don't know how, but he's trying to get mixed up in this convention and trying to meet a deadline. I think he was concerned with the length of the article and the fact that it's going to take us so long to debate it that we might not get through. Well, if his solution to the problem is recommitting it, I think it's going to take us even longer than what we anticipated by getting through on January 4. If he's so concerned about getting through on time, I would suggest a special session to allow us a longer length of time to finish this constitution. I think the first four sections we've come up with, it took us a long time to do it, but I think they

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by considering it first I would move to delete it because it doesn't belong there, and if you delete it, you can't understand the rest according to members of the committee. Another place—Section 9 is out of place. Section 9, according to anybody on the committee that you talk to, is the crux of the whole proposal. Section 9 is amended out of shape or it's changed to any significant degree, then the rest of the proposal has to be recommitment anyway. These are not my words; these are also some of the members of the committee. Now, I don't understand why Section 9 wasn't first. Now, Mr. Perez has said before, that over one-third of the old constitution is considered in this article, and I think it is so complex and so important to this convention, I don't think anybody here can intelligently floor amend this section like you floor amended the other four sections. I yield to any questions.

Further Discussion

Mr. Junez Mr. Chairman and fellow delegates, I certainly rise in opposition to Mr. Munson's proposal. Simply... when I asked him what his alternative, what should we consider, he didn't have an alternative and he didn't know what we should consider. I think when we... for the past two months as we have been trying to get some order in the convention and trying to determine what article, what proposal, what proposition we should consider next, somewhere along the line we determined to consider Local Government at this particular stage. Now, if we don't consider it now, what should we consider? So that's one reason why I rise in opposition to it, and I rise in opposition to it knowing that after reading the Local Government Article, there is nothing in this article that I personally oppose, and will vote against unless it is changed, but I don't think that is the issue. I think the issue here is whether we should consider Local Government at this time or not or whether we should give it to committee and let them completely revise it. If you've read the Local Government you can't be completely revised. It's a philosophy, and it's a good philosophy. It's a philosophy that says that local government shall not operate under the permission of the legislature anymore. Let me just tell you why I think it's a good article in philosophy. Whether you want to change some particular sections or not, I think it's entirely up to you. I am chairman in the Senate of Local and Municipal Affairs—Local Parochial Affairs. We get proportionately as many bills through that committee as many of the major committees, such as Finance and the Judiciary Committees, simply because every police juror or every police jury in this state—every municipal juror or every governing authority has to come to the legislature for such ridiculous things as cutting grass, as authority to have ambulances, as authority to do this, authority to do that and authority to do the other. In 1970 you had four constitutional amendments on your ballot authorizing ambulance services in various parishes. Isn't that ridiculous? You know, when we voted—when the legislature passed the legislation allowing us to set up this convention, one of the things, in the Senate especially, one of the things that we were particularly interested in, that we get the statutory material—gentlemen, that's saying there's too much statutory material and we get out of the legislature the amount of material that we're required to allow local governments to function. We let those, there was a hundred and forty-two or a hundred five and thirty-nine members of the legislature, vote on state issues rather than on all these local issues we've been debating on, debating on, and debating on and taking the majority of the time in the legislature that it absorbs. Let me just tell you, we voted a two billion dollar budget each year, pretty close to two billion dollars. Do you know how much time the legislature spends on that two billion dollars. You as delegates that are not legislators, think about the prime function of legislators, think about the prime function of taxpayers, think about what we

should be doing and what we are doing. I've seen the budget go through that legislature in a period of three or four days. Three or four days. I'm going to get some disagreement in a minute from some people, but that's a fact. That's a fact! We've spent less in the past... in the time that I've been there, in some sessions less than one day on a billion dollar budget, and we spend four and five days arguing whether on some... whether some police jury should have an ordinance to allow trucks or allow loggers or allow something of that sort. It's completely ridiculous. I think the material in the Local Government Article doesn't add statutory material to the article. It takes away from the statutory material in the article, and it allows the legislature, it allows the local governing authorities to function with a lot less legislation than they wouldn't normally have needed. I think if you agree that the prime function, or one of the prime functions that legislators have and the legislature has, is to do something about the mass of state agencies and to do something about the huge budget that we face every year, and not worry whether Fast Feliciano Police Jury can cut grass or not, and not worry about whether Terrebonne Parish can have ambulance services and how they charge for that ambulance service or not, and not worry about the hundreds and hundreds and hundreds of thousands of small little details that local police jurors perform and not legislators, I think we're doing this state a service. You talk to your police jurors or those mayors in the back, or anybody else. We've given them insight to something they've been looking for for years, and believe me, they want it. They want the prerogatives that this article gives them. They want it and they want it bad, and I think we're making a serious mistake if we don't at least give them the opportunity, or give this convention the opportunity to consider what's in this article so that we can amend it. We can amend it like we've amended all the other articles that we've faced in this convention. We've seen some articles come in the convention that were just completely out of line, and I think they came out fairly good. I think this one will also if we give the opportunity to consider what's already existed. If I worked, I'd say as hard as any committee in this convention, and I would ask you to go along and let's hash it out here and not recommit it back to a committee. I'll answer any questions, Mr. Chairman.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, we've seen the specter raised here of centralized government. We've been told that if we don't go along with the philosophy of this article, that we're for centralizing in the hands of state government, a lot of power that doesn't already exist. That is absurd. No one at this convention is suggesting that state government have more power vis-a-vis local governments than it already does. What we are concerned about is the philosophy of this article that would create and grant to government, local government in this case, vast new powers that it's never had before. Let me tell you about the philosophy of this article. The guts of it is that local governments can do anything that the legislature does not specifically prohibit. Look at this Section 9 where it says that "local governments may exercise any power and perform any function necessary, requisite, and proper for the management of its affairs, not denied to it, including anything, to provide for the protection of the public health, safety, morals, and welfare, to license, to tax." Look at the top of page six. "Any such power, performance or any such function or specifically declare the state's exercise of any such power or performance to be exclusive." That's what the legislature must do. It must say that a power it is exercising is exclusive or else a local government can exercise it. Now what does that mean in practical terms? Let's take something like milk price-fixing, something that

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have voted with a fair amount of unanimity for a six months period of time. I will yield to any questions, Mr. Chairman.

Further Discussion

Mr. Kelly Mr. Chairman, ladies and gentlemen of the convention, there have been some statements made up here this morning concerning this group of people, that group of people. I rise to remind you of one thing. Are we writing a constitution for the people of the State of Louisiana or are we writing constitutions for different and special interest groups? I know there was lots of opposition and there has been lots of kick concerning the Bill of Rights. But let's face it, other than the Bill of Rights what in this convention have we dealt with for the people of the State of Louisiana? Everything else has concerned itself with government. What is the power of the executive department? What are they going to do? What is the judiciary department going to do? What are the powers of the legislature? Now, here we are, what are the powers of the people? I simply ask you, and I wish to remind you that it's my interpretation that in that Preamble it says something about "We the people of the State of Louisiana." Does it say anything about "We the governing body of the State of Louisiana"? I think not. I think we are on the wrong track at this particular time. We've got this constitution. We are trying to get a good constitution. Let's get a constitution for the people of the State of Louisiana. I'm not interested in a constitution for the governor of the State of Louisiana. I'm not interested in one for the secretary of state of Louisiana. I'm not interested in one for the attorney general of Louisiana for the district attorneys. I think that I felt very strongly about the powers and duties of the district attorneys. I think the district attorneys of this convention and the assistant district attorneys will recognize the fact that I lent as much support as I possibly could to their position in this regard. We've got to consider it is going to be the district attorneys. This document. Now, let's look at it. What are the people back home saying? They are either saying absolutely nothing... Who have you heard from? We have heard from nothing but special interest groups. I wish to remind you that there are many, many special interest groups in the State of Louisiana, but there are a lot more people, a lot more just plain John Doe people out on the streets. They are interested in their own particular rights. They are interested in seeing government run correctly, rightly, ethically. That is what all of this is about. We've got to come together. We've got to come together. The main objection that I have heard over the past several weeks was that I know everybody says "Oh, what the people back home are saying." Well quite frankly, I haven't heard a lot about what the people back home are saying. I've heard a lot about people that have direct interest in government, what they have been saying. I haven't heard too much from the person back home except one thing: What's going on down there, are you all still doing all of that fussing and fighting, taking you four and half weeks, three weeks to complete this article or that article? We've got to stop that. We've got to stop that. Everybody is concerned about this interest group or that interest group is going to fight the constitution. I'm not interested in what this particular group or that particular group is going to do. I'm interested in what the people, the average person on the street—is he going to support this constitution? That's what it's all about and for that very reason I can foresee that of this twenty-eight page document, be it good or be it bad, I can foresee where we could be here for at least five to seven weeks on this particular document if we follow the same amendment process and don't try and go back into committee and work out some of our differences there. We don't have the time for that. We have shown enough discord down here. We have flattered enough personalities down here in the past. I think we best leave all of that behind us. I

recommend to you that this article be recommitted. Let's iron this thing out in committee. Let's bring something onto the floor. If it takes five or six days in committee, that's fine. We may save three weeks by doing that. We don't have enough time left. Today is September 19, if I am correct...

Further Discussion

Mr. Heine Mr. Chairman and fellow delegates, you know I've traveled this state over trying to be your lieutenant governor. Maybe I didn't belong down here with the big boys because I really hadn't realized how naive I am until this morning. I can't understand why you wait till the last hour and then bring forth a motion such as this this morning. Now, I'm not up here to debate the Local and Parochial Proposal, but I am to debate the fact that you want to send this back to committee. Now, I can't understand for the life of me why some of these people didn't come forward last week. You have had copies of this thing now for several days. We've invited all of the delegates to the committee meetings to bring forth just this kind of thing, but to let this committee get to this point, be down here this morning ready to come forward with our proposal just like everybody else has done in good faith, and then do something like this to us, I'm offended by it. I'm not offended that you might be opposed to some of the sections of this proposal because I'm opposed to some of them, but that's beside the point. The point is, we are ready to go. So, let's get after it. Again I say, you were invited to our committee meeting. I wish you had come. I'm not sure by sending this back to committee, one thing would be changed because just like all of your committees, we had our differences, and we voiced them. We've come out with what we think is a good proposal. The majority thinks it's a good proposal. I'm sure all of you or many of you have been contacted by your mayors, by your councilmen and by your police juries back home saying that they think that it's a good basic proposal. This doesn't mean that they don't want you to proceed with it. Certainly they do, just like we have done in our other proposals. But, I ask you, fellow delegates, let's get after this thing. You know somebody made the statement up here that if we proceeded with this proposal as it's written, that it could kill the entire constitution. Well, I feel just the opposite. I think that if we send this proposal back to committee and treat this committee differently from what we've done all the other committees, this could be the killing blow. So, let's get on about our business. Let's proceed. Let's amend this thing. Like somebody said at a meeting that I was attending the other night with some of the other delegates, "Let's perform surgery on it." But, let's move on and get after it.

Further Discussion

Mr. Willis Mr. Chairman, fellow delegates, I rise to echo the words of the mayor. Words are things that make you think. Through our past, we have been trained on a principle of the Netherlands, conducive to the pursuit of happiness. In my contribution, I sought and seek to steer my ship with hope ahead and hopelessness astern. My hope at times fails, but less often than the forebodings of the gloomy. I am not as displeased as I might have been. I am, therefore, sufficiently satisfied, or so I think, to talk without discussing it in misguided and misleading. In the shades of generalities regarding kingdoms, I remind you that each of us would change our cross for a crown. Who will not change a raven for a dove? To those who label this proposal a raven, let him show me his dove, and we will have a trade. In the vernacular, pulled up or shut up. Talk in generalities does not make one a general on the matter. What is or are the reasons? The fear of debate or the fear of being wrong, neither should deter us. To err is human, to forgive, divine. Our only fear should be the fear of doing wrong and 'tis wrong to back up. What we put in this constitution is irrepealable law and applies to those who govern and those governed alike. If we

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legislated unsatisfactorily in the field. In that case, it is proper for a constitution to properly harness the legislature. If we hear those who would more reduce the proposal for whatever reason, we will do so. But, let us hear that here and now and move forward. Give me leave to ask you to roll up our sleeves and get about our business of striking the bad, embracing the good and adding the best to this proposal, and move forward to an acceptable transcript of our common conscience. Reference back to committee is dilatory and an obvious exercise in futility. The argument on this motion will be more costly than it is. I would admit, in view of his reference to the cost of writing this constitution. I am for examination of the proposal immediately and the terse dismissal of the motion. Thank you.

Further discussion

Mr. [unclear] Mr. Chairman, ladies and gentlemen of this convention, I rise to oppose this motion. I'll say very briefly why. In the first place, this motion has not been given from this podium one valid reason for recommending this proposal, not one valid reason. Except certain people have amendments to recommend, that they don't approve of the way they are written. Has there been out of the four proposals we have considered and adopted, has there been one proposal of those four that hadn't had at least two hundred amendments offered, or at least a hundred and fifty amendments offered? I believe, possibly, the judiciary had a hundred and fifty offered, fifty something adopted, which I believe is the least number of any of the four proposals. But, let's get down to the meat of this motion and please listen to this. This is what you are going to be doing if you support this motion. To me this motion is the most vicious thing that has been offered in this convention for this reason. It is an absolute insult and slap in the face to the Committee on Constitutional Affairs. It is telling that committee that after your months and months of deliberation you have come up with something so bad it is not even worth consideration. If you vote for this motion to reconsider, you are adding insult to injury. Second, it is an insult to this entire convention to say that we are not capable or competent to offer the amendments to correct any wrongs that may be in this proposal. I take violent issue with this motion. I take it as an insult to the committee. I take it as an insult to the convention. I hope you will see fit to overwhelmingly defeat it, go about our business as we had scheduled our business, offer your amendments. A lot of you have said you have amendments. We are willing to consider your amendments. If you are afraid to let this convention hear and debate your amendments, you better withdraw them before you file them. Let's not insult the committee. Let's not insult this entire convention because there will be amendments and more amendments to any proposal that comes up. I urge you to defeat this motion.

Mr. Munson [unclear] I wish to rise to add to the discussion.

Mr. Pomeroy Mr. Chairman and fellow delegates, I, of course, rise to close on this motion to recommend in and absolute favor of said motion. Some of you at this time have said we've heard no reason for recommending it. Well, let me try to give you one or two. The failure of this constitution is a larger matter than the failure of the committee. The success or failure of this constitution will be remembered long after my remarks, my votes and my presence here. I submit to you that thus far, errors though

junction in this constitutional document wherein we must decide each unto himself, do we write a constitution or do we continue Louisiana's historical preservation of statutory material.

particular proposal is chock-full of statutory material. I could take my five minutes, you know, and list fifty examples out of fifty-one sections of purely statutory material. You know this committee appeared before our Revenue and Finance Committee last week. It was appalling both as to the lack of knowledge of what they had done vis-a-vis some of their articles and their failure to recognize the month that we live in Revenue and Taxation on the same matter quite different conclusions. Example: of their proposal purports to take the state out of the ad valorem property tax business. It does no such thing. All it does is prohibit the state from receiving any revenue from ad valorem taxes. It doesn't take the state out of the regulation of property taxes and that's the gut of the issue. I could go point by point. You've got a section in here that talks about a parish can't be any smaller than six hundred and twenty-five square miles. It can't have any less than fifty thousand people. You've got a section mere look at 24—that says "the legislature may" and goes on for a page and a half about what the legislature may do. If that wasn't in there, the legislature could do it anyway. The examples are rampant; the point is this: we have averaged in this Constitutional Convention one day of debate per page of committee proposal. Now you figure it out. Hell, I'm not that smart. I'm a cotton farmer. Right? But, I can count to twenty-eight and I can say one day per page is twenty-eight days. I can say four days a week is seven weeks. Now here is the gut issue. It's not home rule; it's not the integrity of this committee. It's not my personal preference. It's the spectacle; it is the absolute spectacle of this body, of a hundred and thirty-two men and women spending at least seven weeks debating the size of a parish, the number of people in a parish, debating revenue and taxation issues that have, I submit, been all considered heretofore. Now, some say well if we send it back to committee they might not do anything different. They might send right back to us what we have here. So they might. But, I submit to you that there are reasonable men and women on that committee and they will listen to us and by a vote here today to recommend, we are telling them one thing, send us constitutional material, send us a constitution, not a package of statutes. I think they will listen to us...

of Boundaries, Creation, Consolidation, and Dissolution.

is a new sentence which does not appear in the existing constitution. I only want you to know parishes and their boundaries.

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existing law are recognized and ratified." The purpose of that sentence is that when we go to talking about how we are going to change boundary lines or dissolve or consolidate parishes, the committee thought it was appropriate to have a one sentence acknowledgement of the fact that we do have parishes and we do have boundaries as created under existing law. With respect to Paragraph (8), it is a restatement of the present constitution with the following changes: It increases the number of persons that may be included within a new parish to fifty thousand, as opposed to seven thousand which was included in the original or in the 1921 Constitution.

I would be glad to answer questions.

Questions

Mr. Winchester Mr. Perez, the first section says "All boundaries are established, recognized and ratified." We are having a boundary dispute with the parish of Iberia. What does this do to that...

Mr. Perez It does absolutely nothing to it. Whatever the legal rights are under the existing law, that is what the courts would eventually determine. There is no attempt made in the first sentence to change any boundary lines or to settle any boundary disputes. All it does is to recognize that wherever that boundary may be legally located, that's where it is. It would have no effect on any boundary dispute between parishes.

Mr. Winchester Thank you.

Mr. Denberry Mr. Perez, what is the number of inhabitants in the smallest parish in the state right now?

Mr. Perez I do not know offhand.

Mr. Denberry Where did you get the figure that you increase...

Mr. Perez The figure was determined by the committee. After discussion they felt that seven thousand was much too small a number to have within a new parish. It was a number which the committee came up with which they thought was a reasonable number for the creation of a new parish. There's no magic in the number fifty thousand.

Mr. Denberry Well, what was worrying me was that I don't know how small the smallest parish is. Does the staff have that information possibly?

Mr. Perez Sir?

Mr. Denberry Do you think the staff has the information with regard to the populations?

Mr. Perez I'm sure it can be furnished. I don't know that we have it readily available.

Mr. Denberry One other question, Mr. Perez, please, sir. I realize the language...

Mr. Perez If you don't mind, I'll determine from the staff whether they have the population figures of each parish.

Mr. Denberry I have one more question when he answers this one.

Mr. Perez We do not have those figures readily available at this time.

Mr. Denberry Mr. Perez, one other question. I realize the language is the same as the present constitution, but what happens if a parish reduces in population below the figure which you have there?

Mr. Perez This only deals with the creation of new parishes or the dissolution. It has nothing to do with existing parishes.

Mr. Arnette Mr. Perez, is there any particular reason for having this last sentence in Paragraph (8)?

Mr. Perez Well, the particular reason would be a prohibition that no new parish could be created unless it had a significant number of people. It would seem to me that we should have some safeguard that we couldn't create a parish with one hundred or five hundred or two or three thousand people. I think it is a reasonable limitation placed upon the creation of a new parish.

Mr. Brown Mr. Perez, that concerns me too as to why you even need that last sentence. As I understand it, before there can be any consolidation or creation of a new parish, it takes a two-thirds vote, doesn't it, of both parishes involved and it also has to pass the legislature as such?

Mr. Perez That's correct.

Mr. Brown Do you realize that there are a number of parishes? I represent...every parish I represent as a senator--and I represent six of them--there is not a parish that has a population of more than twenty-five thousand people. When you say fifty thousand...

Mr. Perez Well, neither does my parish have fifty thousand, but all we are talking about now is the creation of new parishes and would not have any effect whatsoever on existing parishes.

Mr. Brown Are you aware of the fact that up in Ouachita Parish right now there is a very hotly debated issue going on as to whether West Monroe should be part of a separate parish? There is a strong feeling from a lot of people up that way, so I understand, that they should be a separate parish. Under your provision Ouachita Parish could never, if they so desired, split up into two parishes because...

Mr. Perez I have no strong feeling, and I don't believe the committee does, with respect to the fifty thousand number. But, it seems to me reasonable that we should have some minimum number in the constitution so that we would not have any ridiculously small number of people to create a new parish.

Mr. Brown But, wouldn't you think that the two-thirds provision of having to vote plus the vote of the legislature would be a pretty good safeguard?

Mr. Perez Yes.

Mr. Brown You think you're not to have a specific number?

Mr. Perez Yes, it would be.

Mr. Munson Mr. Perez, along the same line perhaps...I realize that this doesn't have anything to do with any present parish when you're talking about size or population; it only pertains to a reason of a new parish. Would you mind expanding a little bit on your remarks as to why six hundred and twenty-five square miles or less than fifty thousand inhabitants?

Mr. Perez First, under six hundred and twenty-five square miles, that's the provision in the present constitution. The fifty thousand is just again the number that the committee felt that before that such drastic action would be taken to divide parishes or consolidate parishes, there should be that number involved. I don't believe there is anything magic about the fifty thousand number, however.

Mr. Munson Do you know...one more question then. Do you know out of the present sixty-four parishes, how many parishes do we have that, we will say, are less than fifty thousand inhabitants?

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12. Perez, notwithstanding...

Mr. Perez Pardon me, if I may, just to give Mr. Munson the information. The staff has provided me with the figures saying that forty-three parishes have populations of less than 39,199 or about forty thousand.

Mr. Roy Notwithstanding that the six hundred and twenty-five square mile provision is in the present constitution, it like your fifty thousand figure is nothing more than an arbitrary decision that was reached by the committee that really can't be supported philosophically or political science wise.

Mr. Roy Well, don't you think we ought to let the local inhabitants and the legislature decide something of that statutory material as to an arbitrary number like fifty thousand, especially when you point out forty-three parishes have less than forty thousand people?

Mr. Perez The committee was strongly of the opinion that before such drastic action were taken as to either divide parishes, that they should be under strict limitations. Again, the figures involved are a carry-over from the present constitution with respect to the square miles; the number of inhabitants was increased by the committee.

Mr. Roy: Well, is it...does the committee think that if three-fourths of a parish want to separate, that that's such drastic action that they should not be able to do so without a magic number of fifty thousand being reached, or shouldn't it be the...

Mr. Perez: ...the three-footing of the ...
want what?

Mr. [redacted] would be substituting for two parishes
[redacted] that is the incorporation of those local
people and not us ensconcing in the constitution
a number like fifty thousand, which would prevent
forty-three parishes now from being what they are?

Mr. Perez I have no strong feelings about that.

Amendment

Mr. [redacted] No.1 [by Mr. Pugh] Page 1.
[redacted] 32, both inclusive, in
their entirety, and on page 2 delete lines 1
through 13, both inclusive, in their entirety and
insert in lieu thereof the following:
"Section 1. Creation, Dissolution, and Merger
of Parishes; Change of Parish Lines; Change of
Parish Seats

Section 1. (A). The legislature may establish and organize new parishes, dissolve and merge parishes, and change parish boundaries, if a majority of the electors voting at an election held for the purpose in each parish affected consent thereto.

(B) The governing authority of a parish, upon the written petition of at least twenty-five percent of the electors of the parish, shall call an election on the question of changing the location of the parish seat. The election shall be conducted in the manner provided by the general election laws of the state, insofar as applicable. The location of the seat shall be changed if a majority of the vote cast at the election is in favor thereof.

Point of Order

Mr. [redacted] Point of order, Mr. Chairman. It's

is an attempt to consider two sections at

Perez. Mr. Perez, I believe the amendments are in order. Mr. Thistlethwaite had amendments of a substantial... substantially similar to this, insofar as Bill of Rights, which were determined to be in order by the Chair. I don't see a substantial difference there.

Proceed, Mr. Pugh.

Explanation

Mr. Pugh: Mr. Chairman, fellow delegates, you have an amendment before you which will take care of Sections 1, 2, 3 and 4 of the committee proposal. It will do so in half the language; it will contain the very same thing as in the first amendment, and I think I think it does not have the language relating to the number of people in the parish or the square miles. It is inconceivable to me that the committee would have submitted that issue to you without knowing how many people were in the parishes and how many acres or square miles were in the parishes. This amendment takes care of what has been suggested from the floor, when the initial provision was read, as to the wisdom of putting square miles or acres or people in the constitution, as we know it's been an expanding population. I have asked for distribution. I have asked for each of you a sheet of paper 1/2 x 10. If you will look at it, on the left side of the paper are the provisions submitted to you by the committee, on the right side of the paper is my amendment. Such amendments as I may have, henceforth, will always have on one side of the paper the committee's amendment, on the other side of the paper my amendment so that you can read them together. I yield to any questions.

Mr. Rayburn Mr. Pugh, I'm a little concerned over your language here where it says "With a written petition of at least twenty-five percent of the electors of the parish, an election shall be called to more or less move the parish seat." I don't believe the present constitution says that. I don't believe the five percent of the people to sign a petition. I know in my particular parish, where your two largest municipalities are equally divided, we would probably be having an election every thirty days over there, because you could get twenty-five percent of the people in the rural sections to say not to move it and twenty-five percent to the people in the city and then you have it. I'm wondering where you get the twenty-five percent figure; that's not in the present constitution.

Mr. Pugh No, it isn't. But, you will find that generally where you have elections of these natures, they may be called by twenty-five percent. Of course, the provisions relating to elections will determine how many it takes to actually move it. There is one thing to provide how it's called, there's an entirely different thing to provide how

[illegible]

that Mr. Perez raised, I have already
to the way Mr. Pugh is presently

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the four sections that Mr. Pugh seeks to delete. We're taking the cart before the horse here, it would seem to me. There is more language in here, in the original committee proposal, germane to this subject matter which is omitted from Mr. Pugh's amendment. I would like to hear affirmatively from the committee, since they spent so long discussing this matter, why it's here before Mr. Pugh tells us to take it out.

Ruling of the Chair

Mr. Henry Mr. Derbes, your point is well taken. The amendments are still in order and the members of the committee can, during their discussion on this amendment as to whether they will or will not accept it, can bring into play these other sections that you are speaking of, sir.

Questions

Mr. Duval Mr. Pugh, looking over your amendment, it appears from reading the language that a large parish could absorb a smaller parish by merely a majority vote. Now, do you mean that each parish would have to approve it by majority vote or the total number of the voters voting, a majority of the total number of voters voting?

Mr. Pugh I believe that it says "in each parish," which would require both of the parishes.

Mr. Duval In that case, I would agree with you, but the way I read it I don't think it says that, sir. It says "If a majority of the electors voting at an election held for the purpose in each parish affected consent thereto." The way it's phrased, it appears it could go either way; it could go where all it takes is a majority of the voters period.

Mr. Pugh When you say each, you are talking about more than one. You say each parish affected, and I don't know how you can more simply put the phrase.

Mr. Duval Well, I think it could be phrased differently because it merely requires each parish to vote but...the way I think it's read.

Mr. Champagne Mr. Pugh, I don't know if you are aware of it; I could go for your amendment providing, of course, the thing that worries me is that I think in the present constitution it says a two-third vote of the electors voting. I simply find that if a majority is all you need, we're going to have some changing of parishes; we're going to have some elections, every once in a while when this other end of the parish is unhappy with this end; we're going to have this voting around, and you may have the big ones eating up the little ones, and I'd rather see this a two-thirds vote because I think most of the people may be happy with the situation as it exists.

Mr. Pugh I have no objections to that and would withdraw the amendment for that purpose, if you'd like. I'm talking about the number to call as distinguished from how you're going to actually do it.

Recess

[The following delegates present
and a quorum. Amendment withdrawn
and committee will correct.
Amendment withdrawn.]

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, the amendment you now have before you accomplishes the desired results of satisfying the questions from the floor, one being the requirement of two-third instead of a majority; the second being the elimination of the twenty-five percent by the people;

the third for Mr. Perez—I put subparagraph (C) in relating to the existent parishes and boundaries. The technical change was brought about by the fact that, as I appreciate it, if you adopt this amendment, then by Amendments 2, 3, and 4, I will eliminate Sections 2, 3, and 4 because they will then have been totally covered by this section.

Questions

Mr. Casey Mr. Pugh, according to my understanding, your amendment deletes line 14, and my question is, why do you delete "Part I, General Provisions," if you're deleting line 14?

Mr. Pugh Because I had some amendments coming right behind this one for other sections which will take care of that.

Mr. Casey Well, so therefore, there will be no "Part I, General Provisions," and then there will be no "Part II, Finance," is that correct under this particular proposal?

Mr. Pugh It comes out as a different section, and not being paraphrased by those names. We're eliminating those two more lines is what we're doing.

Mr. Abraham Mr. Pugh, I don't understand the need for Paragraph (C). I know what you're trying to say, that you're ratifying or recognizing existing boundaries, but if you read the constitution twenty years from now, it says, "All parishes and boundaries established under existing law recognized and ratified." So, does it really mean anything?

Mr. Pugh No, and I ordinarily would not have had it in there, did not put it in there. Mr. Perez asked me if I would, and I did.

Mr. Fulco Mr. Pugh, isn't it true that you're leaving out the part concerning a petition by twenty-five percent of the electors?

Mr. Pugh Senator Rayburn asked me to do so, and I did.

Mr. Fulco But, don't you feel that that would be a mistake, that we would be depriving the people of a right to call...to petition the governing authority to call an election for that purpose?

Mr. Pugh No, I don't think they are being prohibited from doing that. I believe that anytime twenty-five percent of the people want anything, the governing body will give some consideration to their request. I don't think you're taking a thing away from them.

Mr. Fulco I know but, Mr. Pugh, we are not providing in your amendment for the people to have this right. In other words we are leaving it up to the governing authority of the parish to call or not to call an election, and they could very well call and they could very well not call an election, and the people who would want this change would have no right or no opportunity to require it.

Mr. Pugh That is correct, until the next election.

Mr. Fulco Don't you think that people should have this right? They are going to have to pay the cost for the new courthouse and furnishings and provisions. Yet, in addition to that, this is a government of the people, for the people, and by the people, and I know how you feel. I know you want that in there because you had it in your original amendment, and I even think "Sixty" wants it in there, but I don't feel that "Sixty" realizes what he's doing, and I hope that "Sixty" will give that a thought. I do; I really do. Do you realize it, as I'm sure he doesn't, and wouldn't you agree that it ought to be in there?

Mr. Pugh Well, I had it in there initially. I'll reiterate that Senator Rayburn asked me to take it

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does not take care of that problem, and if you adopt this amendment, and it stands in place of Sections 1, 2, 3, and 4, we leave open that question which, I think, seriously deserves consideration by this convention. Lastly, Mr. Fulco has pinpointed the difference between the committee concept with respect to the change of a parish seat and the one advanced by Mr. Pugh. It was the view of the majority of the committee that if ... there ought to be some means of bringing about consideration of the change of a parish seat and that it ought not to be left solely to the discretion of the governing authority of the parish. For that reason we provided for petitions signed by twenty-five percent of the people. We retained the two-thirds vote requirement because we felt this was a significant enough change to be acted upon only if two-thirds of the persons who vote in that election are in favor of it. I say to you that if you read the committee proposal, you'll find that the language, with respect to the vote that's required, is much better language than in the Pugh proposal, and I think what Mr. Pugh is suggesting that we simply make changes for change's sake, and I would be in favor of that except that we make significant substantive changes in the committee proposal through the adoption of the Pugh amendment, and I therefore ask that you reject it.

Further Discussion

Mr. Perez. Mr. Chairman and ladies and gentlemen of the convention, I only rise for this purpose, to try to caution all of the delegates that we in Local Government Committee, as all the other committees did, went into these matters very carefully and carefully suggested the words that were used, and basically, as I would understand it, or attempt of Mr. Pugh's amendments is to do the same things which are provided in the committee amendment with two exceptions. But the wording is rather clumsy, and I'd like to call it to your attention. It says, on line 3, "if two-thirds of the electors in each of the parishes affected, voting an election held for the purpose in each parish affected consent thereto." If you will read the language in the committee proposal with respect to that particular issue, "the change shall take effect only if two-thirds of the total vote cast on the question in each affected parish, is in favor thereof." It took us quite a good while to be sure that the sentence meant exactly what it should mean. I think it's just a dangerous procedure on our part to helter-skelter change the work of a committee which has carefully considered the matter. Now, in my judgment, there are three issues apparently now which are arising, and I would hope that the convention would consider these issues separately. One is whether by general or special law the legislature ought to be able to change boundary lines; two, whether or not the limitation should be in here with regard to the number of square miles and the number of inhabitants in a new parish, and the third would be way over in Section 4 with respect to the number of persons that would be eligible for change of location of a parish seat. I would strongly urge that we should go about our business in a more orderly manner, and let's see if we can't approach these problems on a one by one basis so that the delegates have the opportunity to understand exactly what it is they are voting on, and so that they can vote more intelligently than you would do under a combination of consolidating three or four sections at one time with a great deal of difference of subject matter. It's for that reason that I reluctantly urge you to defeat this amendment, but it basically is attempting to do other than this general law provision, the same thing that the committee proposal already has in it, with the exception of the two other areas that I've pointed out to you. Therefore, I respectfully ask that you support the committee proposal.

Questions

Mr. Roy. Mr. Perez, I take what you are worried about and Mr. Kean, with respect to the words "general law" used on page 1 at line 19, is that you think the legislature could provide any special way for changing parish boundaries and what-have-you?

Mr. Perez. Yes, I would think that the legislature without the words "by general law" could come in and say, "We decided that we ought to consolidate the parishes of Lafourche and Terrebonne and Jefferson, and it shall be done in this way."

Mr. Roy. No, but isn't that fallacious in that the only way that the legislature may do it and is protected by Mr. Pugh's amendment, it still requires a two-thirds vote of the people in that parish?

Mr. Perez. It still requires that vote of the people back home, but again the provision, in the judgment of the committee, there should a general law applicable to all parishes for which the procedure for which would be set out as to how parishes would be consolidated, merged or boundary lines changed.

Mr. Roy. Now, the other question I have is, how would under your Section 2, how would you ever get to change a parish line since you all don't provide for the special call [call] how it'll come about.

Mr. Perez. I'm sorry; I didn't understand your question.

Mr. Roy. Who's going to bring the special election about provided for in line 29 at page 1? How will that come about?

Mr. Perez. I still don't understand your question. You mean the change shall take effect only if two-thirds of the total vote cast on the question in each affected parish in favor thereof?

Mr. Roy. Right. I understand that where the two-thirds vote is provided, by which special election, who will call it? It doesn't say the legislature may call it?

Mr. Perez. It would be provided under line 19, "The legislature shall provide by general law for these various changes," and in the act of the legislature it would set out under what conditions the election would be called, and so forth.

Mr. Roy. That's where I find I have trouble because lines 19 and 20 say nothing with respect to changing a parish boundary line. It just says, "creation, consolidation, or dissolution." That does not say anything about changing parish boundary lines like Section 2 specifically states, you see? You specifically state on line 26 and 27 a way for changing parish boundary lines, but you don't provide for it to come about. So you all's sections leave out a very integral part of what you're trying to argue.

Mr. Perez. Not in my judgment, Mr. Roy.

[Previous Question ordered. Record vote ordered. Amendment adopted: 64-46. Motion to reconsider tabled.]

Recess

[Quorum Call: 85 delegates present and a quorum.]

Amendment

Mr. Poynter. Delegate Abraham sends up the following amendment:

Amendment No. 1, on page 1, between lines 14 and 24 as omitted by the floor amendment proposed by Delegate Pugh and adopted by the convention on September 9, 1973, delete in its entirety Paragraph

Explanation

"Mr. Poynter. ... because I don't understand, or I don't see or interpret the language of Section C as what I think they intended. As I understand it, what the purpose of the Section C is to say that the parishes and boundaries as of the effective date of this constitution are ratified and recognized. What this says to me is "establish under existing law," tells me that say twenty years from now, there may have been several laws passed or several acts passed which may have changed parish boundaries, and that then is the existing law, so what are we really saying when we have this Paragraph C in the constitution now? I think it's extra language, and I think it's superfluous, and to me it doesn't say anything at all because existing law applies to the particular time period, and that you are asking about. It might be today; it might be next year; it might be ten years from now. That might be the existing law then. Now, if the intent is to say that the parishes and the boundaries as established as of the effective date of this constitution are recognized and ratified, well, then I can understand that, but I do not see the language as it is presently written, and that is why I've offered an amendment to have it taken out.

Further Explanation

Mr. Perez. Mr. Chairman and ladies and gentlemen of the convention, the reason that the clause was put in the original proposal by the committee and the reason that it's contained in the Pugh amendment is because of the fact that in Paragraphs A and B of the Pugh amendment, we talk about how we are going to change these boundaries, and these are the only ways that these boundaries can be changed. The purpose for the recognizing the existing boundaries is the same purpose that we had when we recognized the existing judicial districts, Supreme Court districts, court of appeal districts by reference, and I submit to you that the wording is very clear. It says, "all parishes and their boundaries as established under existing law are recognized and ratified." "Under existing law" very clearly means "existing law at the time of the adoption of the constitution." I submit to you that for a proper constitution, before we start talking about how we're going to change boundaries, we should recognize the fact that we do in fact have those boundaries. So I submit to you that the language is clear. If there's any suggestion to further clarification of the language, I'd be glad to entertain that, but I do believe that we need such a provision in our constitution because when we talk about how we're going to change a boundary, first we ought to say that we have boundaries.

Mr. Gravel. Mr. Perez, would you agree, however, that that does not, not saying that I disagree with it, but I think it is a schedule-type provision.

judicial districts and the Supreme Court districts and the court of appeal districts, but the Judiciary Committee, and the only purpose here the Judiciary Committee, was to recognize that

"Mr. Perez. ... for proper construction of the article. In my judgment, before we talk about how to change something, we have to have something to begin with, and that was the only purpose for the statement, and it's a very brief statement, and it is.

Mr. Tobias. Mr. Perez, is it not true that the present parish boundaries are set by statute?

Mr. Perez. Yes, they have been set many different ways, but the fact of the matter is that we are talking in this article about how we are going to change them, irrespective of how they were originally established. We're talking now about in the constitution, about how they are to be changed, and

these boundaries, and then this is how we'll change them.

Mr. Tobias. But, aren't you constitutionalizing something that is not presently in the constitution, whereas in the Judiciary Article we were constitutionalizing something that was already in the constitution...

Mr. Perez. No, sir. The present '21 Constitution and Paragraphs A and B of this new proposed constitution would constitutionalize them because it provides the only method whereby they can be changed.

Amended.]

Mr. Poynter. Amendment No. 1, page 1, line 14, in Floor Amendment No. 1 proposed by Delegate Pugh and adopted by the convention on today, on line 6, immediately after the word "if" and before the words "of the" delete the words "two-thirds" and insert in lieu thereof the words "a majority." (And he has, the author has stricken Amendment No. 2, so the only amendment is Amendment No. 1—he has stricken Amendment No. 2.)

Explanation

Mr. Newton. Well, this just requires instead of having two-thirds vote of the electorate affected by a change, it requires a majority vote. Now, I think that if you are going to have the two-third requirement in there, I think we can strike Paragraphs (A) and (B) of the Pugh amendment and just have Paragraph (C) reading: "All parishes and their boundaries as established under existing law are recognized and ratified and shall never be changed, because I don't think you could ever get a two-thirds vote. I think the issue is, I don't like to point out that in the article on the judiciary, in setting up the requirements for the change of judicial districts, there was just a referendum vote requiring a majority of the electorate." I'd be glad to answer any questions.

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of the people want something, let them have it." But, we all realize that with respect to most elections, there's only the relatively small number of people who vote. We felt that in a matter of this great importance, that definitely a two-thirds vote should be required instead of a bare majority because when you go to change parish lines, you are seriously affecting the very makeup of local government and the area which it affects. So, in my judgment, it would be ill-advised to allow a bare majority to change the parish lines or to consolidate parishes.

Questions

Mr. Burns Mr. Perez, don't you feel that this two-thirds majority, is it really the only protection a smaller part of a parish would have or a smaller area would have against a heavy populated area, on the other hand?

Mr. Perez There is no question about that, sir, and this is a very, very dangerous thing if we do not retain the two-thirds vote.

Mr. A. Landry Mr. Perez, if we adopted this amendment, it would mean that just a simple majority of the people in... or the voters, not the people, but the voters who voted in an election could change the parish seat and, yet, not provide any funds to so move it. Is that correct?

Mr. Perez Well, as I understand it, the Amendment No. 2 is rejected, so it no longer applies to the parish seat; it would only apply to the change of boundaries of parishes, consolidation of boundaries, etc., which is of even greater importance than a moving of a parish seat.

Mr. A. Landry (B) says: "Location of a parish seat shall be changed if two-thirds of the votes..." I'm just wondering. I thought his amendment also changed that.

Mr. Perez It's my understanding that he withdrew Amendment NO. 2, so that his two-thirds vote would apply to the change of parish boundaries, consolidation of parishes, and it would be a very, very dangerous thing to have a majority of a percentage of voters have the long-range effect of changing parish boundaries or of consolidating or merging parishes.

Mr. A. Landry In other words, you could have a tight vote like we had on some bond issues of less than twelve percent of the people who are registered to vote, and seven percent of the registered voters would be a majority.

Mr. Perez That's the reason this two-thirds provision is in there, and the committee was overwhelmingly in favor of this particular provision.

Mr. Denny In as I understand this amendment, if two parishes are merged, that can be done by a majority vote. After the merger, however, a parish seat has to be changed, I would assume. Therefore, you would require a two-thirds vote for that. Doesn't that appear to be improper?

Mr. Perez No, sir. As I understand the amendment, it's just the opposite. It would take two-thirds to change a parish seat, but only a majority to merge parishes, which doesn't make any sense at all to me.

[Previous Question ordered. Amendments rejected: 17-84. Motion to reconsider denied.]

Amendment

Mr. Poynter Amendment No. 1, sent up by Delegate Gravel. On page 1, in Floor Amendment No. 1, passed by Delegate Pugh and adopted by the convention on today, on line 6 of the text of the amendment after the words "two-thirds" insert the words "or

more" and on line 15 of the text of the amendment after the words "two-thirds" insert the words "or more".

After each vote requirement it would say "two-thirds or more."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this amendment just is a technical amendment to make sure that we're not locked in with a specific vote of two-thirds and to require that the vote be two-thirds or more of those voting to accomplish the purpose of the amendment. I move its adoption.

Further Discussion

Mr. Perez I might say we have no objection to the adoption of the amendment, but this is a perfect example of how you have taken a committee proposal which was very carefully worded and, quickly on the floor of the convention, have changed it up and there are still other defects in this particular article, but I don't intend to move any further with amendments. But I just wanted to call the attention, hopefully for the future, that we will consider a little more carefully the committee proposals.

Questions

Mr. Conroy Mr. Perez, are you aware that throughout most of the articles we have adopted, particularly the one on legislative powers, we frequently referred to a two-thirds vote of the members of each house of the legislature, and never said two-thirds or more of the members?

Mr. Perez Yes, I understand that, but what... again, I'm just calling the attention... The original committee proposal was well drafted, and what we're doing here is trying to patch up something which was ill-conceived and thrown into the amendment at the last minute, which really did the same thing as the committee amendment did. But again, in order to try to help it out and improve it a little bit, I'd say we have no objection to it.

Mr. Smith Mr. Perez, do you think "two-thirds or more" make any sense?

Mr. Perez No, sir, I don't think it makes too much sense, but what I'm... again, what I'm saying is that it's a little bit better, I believe, than it was before.

Mr. Smith Well, don't you think it's best just to leave it like it is?

Mr. Perez Well, I'm afraid that when you say "two-thirds," it means exactly two-thirds, not one less than two-thirds or not one more than two-thirds. I don't know. I'll...

Mr. Smith Well, isn't that the way the tax law reads in the constitution, "two-thirds of the members elected"?

Mr. Perez It says "At least two-thirds of the elected membership of each house," which is a lot different than the verbiage that's in there.

If I may finish answering the previous question, you see, we very carefully in the committee proposal selected our words, "The change shall take effect only if two-thirds of the total vote cast on the question in each affected parish is in favor thereof." This wording is very confused, in my judgment.

Mr. Goldman Delegate Perez, isn't that superfluous language? If it takes two-thirds to gain an objective, if more than two-thirds voted, you wouldn't lose that objective, would you?

Mr. Perez I'm not the author of this amendment, sir.

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Mr. Goldman Well,

saying I have no objection to it, personally.

mean anything?

Mr. Perez I'm not sure whether it does or doesn't but Mr. Gravel is the author of the amendment. I think he should answer that question.

Mr. Pugh Now, Mr. Perez, you're not seriously trying to tell these people there is a difference between your provision, "only if two-thirds," and then using the phrase "two-thirds," are you?

Further

Mr. Chairman, fellow delegates, I hesitate to disagree with my distinguished Chairman, but I agree with the comments that have been made that this amendment is unnecessary. If it is necessary, we've got to go back, as Mr. Conroy has pointed out, and make a lot of changes in this constitution that we already have adopted and the new proposals that are yet to come. I think we just are nit-picking here, and we ought to reject the amendment and get on with our business.

the division

Mr. Champagne Mr. Chairman, ladies and gentlemen, I'm going to say it very brief. This is what I refer to as a lawyer's amendment. It's clear to me what it means; it's clear to you, but we've got to spell it out in plain English. We've got to go out and they say every word in the constitution because somebody might not. Now, I'm not an attorney, but it's clear to me what it means--it means two-thirds or more and you don't have to put it in the constitution. I'm sure everybody back in the 39th District, even those who barely can read, will know what it means. Thank you.

Question

Mr. Fontenot Mr. Champagne, isn't it true in the present constitution the exact words are "shall remain unchanged unless two-thirds of the total vote cast at such election in each parish affected thereby shall be in favor thereof"? There's no words "or more" in the present constitution.

Mr. Champagne I'm sure it is, and that's why it takes us so long to get anything done in this convention.

Amendment

Amendment

Mr. Poynter We don't have the distribution copies. I don't think it's really necessary.

On page 1, delete lines 25 through 31, both inclusive in their entirety.

I believe those are the correct line numbers, 25 through 31. Delegate Pugh sent that up.

territory, it shall be entitled to

debts and liabilities of the parish or parishes from which the territory is taken.

the convention, this makes no constitution and only require that you have the change of solidation, etc., that each provision with respect to the adoption of that particular provision or the adoption of the Section 3.

Question

portion refer to there?

Mr. Perez "It shall be entitled to a just proportion of the property and assets..." I think that we know what the common usage of the word "just" and the word "proportion" is, and that that there would have to be an apportionment of the debts and of the assets.

Mr. Roemer "A just proportion of the 'just proportion,' Chalm?

Mr. Perez Well, the "just proportion" would be determined in the act which would affect the various boundaries, but there would be a requirement that this "just proportion," that there would be a division on the basis of the "just proportion."

Mr. Roemer Well, then the proportion may be just or unjust, depending on who is judging it. Isn't that correct? Why have the word "just" in there?

Mr. Perez All I can say is that we have adopted a tremendous amount of general language in many of our other articles, and this is just one more that I believe the courts would end up deciding as to what "just proportion" meant, just as we have done in so many of the other provisions we had in this brief constitution.

Mr. Stovall Mr. Perez, did I understand you say that the "just proportion" would be determined by the proposition that the people vote on?

Mr. Perez I said that the act of the legislature, in all probability, would vote on that "just proportion" of the division or the creation by the people. This is a general provision which just requires that there be a "just proportion" to each of the parishes affected.

Mr. Stovall What would happen if the legislature didn't vote on it in the constitution?

Mr. Perez Well, this is a provision that if there is such a division of the parishes get a fair shake and know what would happen. The point is that it's all to one parish and none to the other. It is a protection feature of the constitution.

instance, if one portion of the parish got courthouse and the other didn't, would that not more a legislative question than a judicial question whether it's a judicial...

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I was wondering where the courts would get in on that because I would suppose it's a legislative question.

Mr. Perez Well, the courts, of course, would get in just as they would under any other provision in the constitution, is after the act of the legislature is passed, and if someone would decide to go to court and say that this particular parish or part of a parish in which a new parish was created was not given a just proportion, it would be up to the courts, then, to determine whether or not this constitutional provision had been followed--just as you would interpret any other provision in the constitution.

Mr. Tate I understand what you're saying, but I'm just trying to visualize, for instance, assets that are in the part of the parish that retains them--the courthouse--I suppose you might say the just proportion is they get that courthouse. But, if the legislature determined otherwise, I wonder what the courts could do?

Mr. Perez Justice Tate, you are a member of the Supreme Court, and I see you fellows interpreting this constitution of ours everyday, everyday, and I don't see there's anything different between an interpretation of this particular provision or any other provision in the constitution.

Mr. Poynter Amendment No. 1 [by Mr. Pugh]. On page 1, delete line 32 in its entirety and on page 2, delete lines 1 through 6, both inclusive in its entirety.

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, the confusion was that my original amendment had attempted to delete all of these sections. The Chair called to my attention the fact I'd have to have separate amendments to delete them. There are two things that concern me about the existing provision submitted by the committee, and there's a reason I'm asking for its deletion. We've already talked about this justness as to who is going to get what assets. Obviously, the people are not going to vote on changing part of the parish until they know what they are going to get or what they are going to lose. It's not a practical problem. But, more important than that, in my opinion, is the fact that this suggests that the people, by vote, can divide the debt. Gentlemen, it's inconceivable to me that a parish could provide for bonds that the whole parish would be liable for, then divide the parish into two parishes, and one of the two avoid the debt. Obviously, the debt affects the whole parish, so to talk of dividing assets and dividing debts is absurd. To me, if we left that in the constitution, we may raise serious question about the validity of the bonds. Now, it may well be in the present constitution. All I'm saying is it has no reason to be in this constitution, and should be eliminated.

Question

Mr. Inglettary Mr. Pugh, I just want to get straight on what your original amendment did. Did it delete line 14, or did it begin with line 14?

Mr. Pugh Sir, I deleted the phrase "general provisions" at what's on line 14. I thought I discussed that with you at my chair. I did intend to delete "general provisions"...

Mr. Inglettary I thought I heard Mr. Pugh say line 15.

Mr. Pugh Well, I'm sorry. I'm sorry. I discussed it with you at my chair. I did intend to delete "general provisions"...

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I re-

marked on this question at the time Mr. Pugh's original proposal was before you. This particular section has been in every Louisiana Constitution since 1879, and there are at least three decisions in under this provision. Now, in answer to the question, I think, that Judge Tate raised, a question did occur in connection with a division of a parish as to what constituted a just division of the property. In the case of Fontenot v. Young, the Louisiana Supreme Court said it had the authority to decide whether or not a just proportion had been made in accordance with the constitution. I say to you that without this provision in the constitution, that then it becomes simply a legislative matter without any recourse to the courts. It simply is a matter for the legislature to decide that one half of the parish would get all of the assets, if it happened to be over in that side; and the other half, which is a newly formed part of the parish would get nothing. At least with this provision you'd have a right to go into court and seek some redress against that kind of unjust division of the assets. Under the circumstances, I think that this provision should be in the constitution. It has been in the constitution, it has been litigated, and it has served a useful purpose to assure a just division of assets insofar as this...as a merger or consolidation, or a division of the parishes are concerned.

Questions

Mr. Tate Mr. Kean, that's the very thing I was worrying with a minute ago. Wasn't Fontenot v. Young the case which held that Evangeline Parish was improperly created in about 1912? In other words, it created a judicial question out of what was essentially a political question.

Mr. Kean Well, it also got into the question of rights and obligations as insofar as the new parish was concerned. I think without this constitutional provision by which you got into that question, I think it's simply a legislative matter. Under the circumstances, there'd be no right of the court to inquire into the question of whether there was a just proportion of the assets distributed between the parishes. I think insofar as Mr. Pugh's question about debt, under those circumstances where you've got...you couldn't impair the obligation of that debt. But, again, you'd have the question of if the poorer side of the parish got hardly anything, does it have to raise as much money as the rich side of the parish in order to retire their debt, or can the legislature adjust that between the two?

Mr. Tate Well, could you put the question another way? If the legislature saw fit to submit to the people this proposition and if the people wanted it, what business is it of the courts to upset it, if no debtors are concerned, etc.?

Mr. Kean I'm not too certain that the legislature would have to get into that question insofar as submitting it to the people is concerned. I thought Mr. Leithman was sleeping. I couldn't believe he was asking me a question.

Mr. Henry Oh, he just rests like that, Mr. Kean.

Mr. Drew Mr. Kean, if this provision was deleted and a new parish was created, wouldn't it lead to the not only possibility or probability that parish would say "We owe no debts whatsoever"?

Mr. Kean I think that's the very reason for having this provision, Mr. Drew. It certainly does no harm in the constitution and apparently has been used in the past for the purpose of disposing of this kind of a question.

Mr. Tobias Mr. Kean, I am reading line 3 of Section 3, and it says...lines 3 and 4, and it reads: "a just proportion of the property and assets." When it says the word "property," does that mean the land area or does it mean the physical property such as automobiles...

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Mr. Roy Mr. Kean, I agree with what Justice Tate said, and I want to ask you, don't you think if this is... if the distribution would be so unreasonable, that under the equal protection clause the citizens could demand court intervention, if necessary?

Mr. Kean Well, I'm not too sure I understood what Judge Tate said, but if that was the point he was making, it seems to me there is no reason to leave this to chance. Now, the question of due process would be involved, particularly under circumstances where the courts in this state have held up till now that a municipality or a parish is not a person within the meaning of the due process clause. If you look at the case of Penny v. Bowden, you'll find that holding by the court.

Mr. Roy No, we're talking about the individual citizens that would be harmed by it.

Mr. Kean Well, I'm talking about the agency that's being split, and the parish that remains or the two divisions that remain having a right to go in court and seek their justice.

Mr. Roy You are really worried about Mr. Drew's question? Do you think that the legislature would be... the new parish is formed, it won't owe any of the debts?

Mr. Kean Mr. Roy, I've been watching the legislature since 1936, and you'd be surprised at some of the things the legislature would do.

Mr. Roy I understand, but don't you think then the other portion of the parish... two-thirds vote if it was going to be saddled with all of the debts, and the new parish not?

Mr. Kean It may not, but I see no reason not to afford them the protection.

Mr. Roy Isn't this a protection?

Mr. Kean No, sir.

Mr. Poemer Mr. Kean, let me try you on this just proportion business again and hear that explanation. First of all, has this provision in Section 3 ever been used before? I know it's been in the constitution for a long time.

Mr. Kean Yes, sir, it has. There are three cases decided on it.

Mr. Poemer Okay. Now, in those cases, did any of them use this "just proportion," and if so, how did they? Was there some mathematical basis for... is it land mass over land mass, or people over people, or what?

Mr. Kean Well, I think that when the constitution requires a newly established parish to institute judicial proceedings in a particular court to effect an adjustment of rights and obligations as against the parish or parishes from which of these that way,

Mr. Kean Amendment sent up by Delegate Pugh. (Amendment) to be read by Mr. Tate. (Amendment) to be read by Mr. Tate.

Mr. Kean Mr. Chairman, fellow delegates, this section is necessary for these reasons. Prior to the 1921 Constitution, it had been a practice of the legislature to establish municipalities by a special legislative act or charter. In 1898, the legislature adopted what was called the Lawrason Act, which was general act under which municipalities would be incorporated in government, so that when the 1921 Convention met, they included this section to make it clear that there would no longer be any special legislative charters incorporating new municipalities, and that new municipalities which were incorporated would automatically go under the Lawrason Act unless it voted to go under one of the other types of government provided for in the revised statute. The second part of the section is necessary because there are about fifty municipalities in the State of Louisiana which continue to operate under special legislative charters which were granted prior to the 1921 Constitution. As a matter of fact, the city of Plaquemine, for example, across the river, has a charter that goes back to about 1879. The city of Baton Rouge has a charter that goes back to 1898, and under the circumstances, in order for those municipalities to continue to operate under those special charters and to amend or modify those charters, the second part of the section is required. I don't think there ought... there should not be any objection to the section. I think it's necessary to continue what I believe is a good philosophy of not having special legislative charters. I think Mr. Pugh has an amendment which does some stylistic change to it, but essentially retains the substance of the proposal. I'll be glad to answer any question if anybody understood it.

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Mr. Avant Mr. Chairman, ladies and gentlemen of the convention, thank you for your attention. Let me preface my remarks by saying that no right-thinking person would advocate any piece of arbitrary or discriminatory legislation that had its object and purpose the punishing of any parish or any area in this state or municipality in this state. And I am certainly not advocating such proposition and I think that we have adopted, heretofore, adequate provisions in this proposed constitution that will prohibit that. But this Section 6, as it is, whether it is entirely a horse of another color, it contains an illusion. It starts off and it says, that "the legislature may classify parishes or municipalities according to population or on any other reasonable basis related to the purpose of the classification, and legislation may be limited in its effect to any such class or classes." Then, in the very next sentence, it takes all that away because it says that "no statute which, as a result of its operation, is going to apply to less than six parishes or municipalities, will be operative in any such parish or municipality until it has the blessing of the local politician."

That's what it says. It doesn't say the people. It says the governing authority. Now, it doesn't take any great genius to think about five seconds and come up with at least a dozen categories in which the legislature may reasonably adopt legislation which will, in its effect, be limited to less than six parishes or municipalities. Just to give you a few examples that came to my mind just in a flash: Cities over two hundred and fifty thousand in population, parishes wherein a nuclear generating facility is located, parishes where there are deep water ports for oceangoing vessels, parishes where the pollution index might exceed a certain figure for a certain number of days of the year, parishes where the population exceeds a certain number, and to get to my own home parish, which I love dearly, and where I've spent all my life. What about the parish in which the state capital is located? I can entirely conceive that in the interest of all of the people of the State of Louisiana, that the legislature may, someday, need to legislate in this effect, will apply only to the parish in which the state capital is located because of the fact that it is the parish in which the seat of government is located. I don't think that as a citizen of the State of Louisiana, that it would be wise to give to the governing authorities of this parish veto power over that legislation. Now, I'm not saying that that's going to happen tomorrow, or next week, or within six months after this constitution is adopted if it is ever adopted. But I say that you are tying the hands of the legislature. Now a reference was made this morning by Mr. Munson to kingdoms. I don't think we are talking about kingdoms here. We are talking about fiefdoms...fiefdoms...sheldoms...not nearly as big as kingdoms. I say that we are here to draft a proposed constitution for the people of the State of Louisiana. If you put this provision in this constitution whereby, even though it is a reasonable classification, and bear in mind...bear in mind, that the legislature cannot classify by the expresses language of this section, except upon a reasonable basis; then, if they have so classified, and the basis is reasonable, by what stretch of the imagination you can suggest that if it's effect is to be applicable, initially, in only six or less parishes or municipalities, that each one of these parishes or municipalities that the governing authority should have the right to veto that legislation is beyond me. I say we are here, representing the citizens of the entire State of Louisiana. We should not forget that. I don't intend to forget that. If there is any reasonable basis for classifying my parish or my city and maybe one or two others in the state, in order to protect and promote the interest of the entire state, then I, personally, don't desire to have any veto power over that, because I think the legislature is the one to represent the people of the state and when they have acted on a reasonable

basis, that no segment of the state should have the right to veto what they have done.

Questions

Mr. Tate Mr. Avant, you raised some questions in my mind that I didn't realize were there.

Do you interpret that to mean, for instance, that these procedural statutes that they pass all the time that say, for instance, that the venue in a suit against the receiver of an insurance company shall be in the state capital. Do you interpret that provision of the constitution to mean that after the legislature passes it, the East Baton Rouge City Council would have to approve that statewide venue provision?

Mr. Avant Justice Tate, I'm only reading what the statute says...what the provision says. It says, "No statute which is applicable to fewer than six parishes or municipalities shall become operative in any such parish or municipality until approved by ordinance enacted by the governing authorities of the affected parish or municipality. Now to me, that's plain language, and the answer to your question is, yes.

Mr. Roy Mr. Avant, under your interpretation, isn't it possible that the legislature, after months of hearing and stuff, could have some type of plan where six parishes, or even like a super-pot would be involved, and if it was six parishes or less, that one police jury of one of the six parishes, after an overwhelming mandate all over, could by a simple majority vote, stop what the legislature and what five other parishes and all the people wanted?

Mr. Avant That's not a matter of interpretation, Mr. Roy. That's what it says. You don't have to interpret it to get that out of it. All you've got to do is read it.

Mrs. Zervigon If your amendment is adopted, what would happen in the case where a legislator cannot, or does not, for some reason, advertise his bill in advance of a local bill? If he has to then wait until the next session of the legislature before he could introduce it and have it acted upon by the legislature?

Mr. Avant Mrs. Zervigon, I have not, in this amendment, considered the question of advertisement. I think we have taken care of that somewhere else with respect to local and special laws. I haven't thought about advertisement. I've addressed myself to the sense of this section which is that the legislature may not pass any law, no matter how reasonable, or no matter upon what type of classification, that will be applicable to six or less parishes or municipalities, except upon each of those areas having the veto right over that statute through its governing authority.

Mr. Blair Mr. Avant, in 1970 I had a bill started off statewide, the annexation bill. It ended as one parish or a local bill. Now under this as it's written, if I heard with six parishes, my bill would have been automatically dead, would it not?

Mr. Avant It would have been subject to the veto power of the police jury or the other governing authority in any parish to which it was applicable, if it was applicable to six or less.

Further Discussion

Mr. Brown Mr. Chairman, fellow delegates, I want to briefly echo what Mr. Avant said, and also the comments of Delegate Roy, and also Delegate Tate. I think this can cause us some very serious problems. This comes to mind to me in the fact that representing a rural area in the legislature, I've had to deal with a number of local bills and look at a number of situations where, as we move towards the future, we're going to more and more have to deal with interparish relationships, municipalities

us toward economic districts of maybe three, four or five parishes. When you look at our highway program in the rural areas, the governor said that we are not going to be funding any more if he has his way, of rural areas for highways. Therefore, we are going to have to go to highway districts and the parishes are going to have to get together to survive. If we let fifteen or twenty municipalities get together, and then a year, or two or three years later, statutes have to be passed to implement particular programs, and one municipality can kill the whole program, it seems that we could create ourselves some very serious problems.

Mrs. Zervigon was concerned about the advertising policies. Her indication to me was that she was giving us another way to give us some local material. She raised the question about what do you do in terms of advertising right now. Well, you've got to advertise the local bill thirty days before it's introduced. And, of course, you could introduce legislation several weeks into a legislative session, which means that you've got to advertise just a couple of weeks before the session. That, in my mind, doesn't give us another alternative. If you want a local bill, go ahead and advertise for it. You've got a procedure in which you can do that. But this will put strong limitations on interparish cooperation, and cooperation amongst a number of municipalities. I think it's bad, and I think we ought to delete it and support Mr. Avant's amendment.

Discussion

Mr. J. Jackson. Mr. Chairman, ladies and gentlemen of the convention, I am a member of the Local and Parochial Government, and I've so informed members of the committee prior to the proposal coming to the floor, that there were certain sections of our article that I have had a responsibility to get up and speak for or against. And so, I don't want you to think I am up here without the full knowledge of the committee, that I had told them that I was going to speak.

I rise in support of Mr. Avant's amendment and opposed to our committee amendment....committee section, as proposed by the committee, for several reasons. One, as Senator Blair has adequately put it, and it happens every day in the legislature, legislators start off with general laws. There is no mal-intent to punish or to go after any one particular parish. But as a matter of political compromise, I have heard, as one legislator, where "Representative Jackson, I understand your problem. This doesn't affect me, but I want to see how it works in New Orleans, first, and so, therefore, if you'll just let it go to New Orleans, then, you know, I have no objection." And that's the true fact. And you'll have situations, particularly with the new direction of the federal government, that you are going to need legislation to provide, or to pertain, to localities as Senator Brown's.

Secondly, I was concerned more so about the fact that if, by....if my bill didn't get killed, and it was for my constituents who, I believe I have their interest at heart, that I have to get the sign-off of the local governing body, which

about laws that they pass that affect my constituents and ask for my sign-off.

The other point I want to bring in is that it has been said that classification has been a tool to punish, particularly Orleans. I think that

redistricting, you'll find out that that will not be the case. Secondly, that particularly was....concern was expressed by Mrs. Zervigon....particularly any factors, if you just want to talk about Orleans, Orleans has enough....not enough, but a sizable delegation within the legislature to

there. The questioners say, "Well, what if that happens?" I want to suggest to those members, a....the committee, if any legislator intro-

the mal-intent of being punitive, then I suggest what they unselect th

I would suggest to....posal as submitted....to some very strong limitation trying to address....probably create more problems. I think what Mr. Avant's amendment does, in my estimation, is to allow for the kinds of checks and balances. I would ask you to seriously consider the favorable adoption of Mr. Avant's amendment and reject, in essence you would be rejecting, that as being proposed by the committee. I want to suggest to you that the legislative process, oftentimes results in general laws being reduced to local laws with not the intent of the author who introduced it. I want to remind you again, that every parish has a...., and the delegation is supposed to be representative, regardless of....you know, not....regardless of the fact that they are in the legislature, ought to be representative, to some degree,....stitution....from that area. We have....have city councilmen, we have legislators I would suggest to you that the Avant amendment allow us, a....with the other kinds of checks and....presently exist that the problem, as I appreciate....and explained in the committee, was not be to....I really think that....

Further

Mr. Flory. Mr. Chairman and delegates to the convention, I rise to support Mr. Avant's amendment. Let me say at the outset, that what the present constitution provides with regards to this matter, I have no objection. But it's my judgement with what the law now provides, and what is proposed, is a hundred and eighty degree turn. I don't believe that they intended to do this, but what they have done is the proposed statute is to prohibit the enactment in the future of retirement laws for local government. Now, every municipality in the state that I know of, of any consequence, has a local retirement system set by statute. This would preclude the legislature from enacting statutes unless they were then adopted by ordinance of the municipality, which then gives to the municipality veto power over the legislature.

Now I suggest to you that even though Article 11 Section 13 of the Legislative Article that we adopted, requiring publication in the local journal of a notice to file a local and special law, does not clear the problem entirely. What it does do in fact, in my judgement is, require both advertisement thirty days prior to the session of the legislature which is good, but secondly, if it affects a local parish or a local municipality, it then becomes subject to the second rule, which is the proposed section before us. So I suggest to you that what you would then have is to meet both criteria. When I think, actually, is the public notice is sufficient in the filing prior, thirty days prior to the legislature, to give the municipality adequate notice, as well as those....as to what's to be introduced in the legislature concerning that individual municipality. And then go before the legislature, let the legislature make its legislative decision, and then let that be the law of the state.

Question

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much weight in something that is introduced from somebody from, let's say another parish, specifically designed for a leave?

Mr. Flory Well, my answer to that is, in my experience around the Legislature I have only seen it done on very rare occasions where a member of the legislature from another area would introduce a measure of local and special nature. If they did, in the occasions that come to my mind, they were defeated by the legislature as meddling in local affairs and the legislature killed it.

Further Discussion

Ms. Zervigon Mr. Chairman and delegates, in speaking in opposition to this amendment, I just want to clarify what it is the committee was about. We were not trying to give each area, each municipality, each parish, veto power over things that might benefit the parishes surrounding it. What this says is that "local law will not take effect in that parish." It says nothing about the parishes around us. I must say that I was one of the primary movers on the committee for this for this reason: I've been told over and over again, and I've seen for myself at times how the city of New Orleans can be singled out by a general law, not a special or local law, affecting all municipalities over four hundred thousand. I'm trying to say that if this kind of general law affecting all cities over four hundred thousand is passed that the citizens of New Orleans should have a little bit to say about it, because we're uniquely vulnerable in this area. I wasn't trying to hamstring the legislature, and I think the committee didn't have that in mind at all. We were just trying to figure two ways to pass special and local laws so that the legislature could not, in a fit of peak, override the local legislative delegation and be punitive to any one area of the state. Thank you.

Further Discussion

Mr. Kean Mr. Chairman, fellow delegates, this provision was included in the local government proposal, designed to avoid a situation where classification was used as a device to enact special punitive legislation against a particular municipality or parish. It was the intention of the committee in dealing with this section, that if we had a provision in the legislative article which dealt with local or special laws, and provided that these local or special laws could be enacted if they were advertised for some period of time before the legislative session, under those circumstances the local governmental agency would have knowledge of the fact that some legislation was being offered which would affect that particular political subdivision, and would have an opportunity to appear before the legislature and perhaps work the matter out in the legislative discussion. This was designed to take care of the situation where no notice was given of any local or special law, and then through the device of classification, have the legislature seek to enact what would constitute purely special or local legislation through that means without the advertisement. Now, Mr. Pugh has a proposed amendment to this section which would make it abundantly clear that that is what the section is designed to do, and will provide for the either/or method that Mrs. Zervigon talked about earlier. If you gave the notice of the local or special law to be introduced in accordance with the legislative article then this section would not be applicable. On the other hand if you did not give notice of a local or special law, and through the device of classification, attempted to deal with the problem, this section would be applicable. I say to you that this section has much merit. If you go back and look at the history of the city of New Orleans, back during the late 1920's and through the 1930's and see the punitive legislation directed against that municipality in the guise of legislation designed to apply to any municipality over four

hundred thousand, you begin to see the need for some type of regulation of this kind in dealing with the classification procedure. I say to you that it would be in our best interest to reject the Avant amendment and then proceed to act on and approve the Pugh amendment which will follow.

Questions

Mr. Roy Mr. Kean, what does the present constitution say about this new provision?

Mr. Kean The present constitution has a provision with respect to this relative to the city of New Orleans.

Mr. Roy So this is a new provision? Is this a new concept?

Mr. Kean This adopts the rationale of the New Orleans provision and makes it applicable generally.

[Previous Question ordered.]

Closing

Mr. Avant I just want to say one thing. Mr. Pugh advises me that he is in favor of my amendment, that if my amendment passes he will not push his amendment. Secondly, the sole purpose they say of this is to avoid punitive legislation directed at particular parishes or municipalities. At the period of time of which they complained there was no equal protection clause in the constitution of this state, nor was there any provision which provided that classification must be on a reasonable basis. So their fears along that line are not justified. I ask support of the amendment for the reasons I previously stated.

[Record vote ordered. Amendments adopted: 81-33. Motion for reconsideration tabled. Previous question ordered. The Yeas, 36; Nays, 14. Motion for reconsideration tabled.]

Reading of the Section

Mr. Poynter "Section 7. Existing Home Rule Charters of Plans of Government of Parishes and Municipalities Ratified

Section 7. (A) The plans of government and home rule charters of the parishes of East Baton Rouge, Jefferson, and Plaquemines and of the cities of New Orleans, Baton Rouge, and Shreveport shall remain in effect, and may be amended, modified, or repealed as provided therein. Each of them shall retain the authority, powers, rights, privileges, and immunities granted by its charter. Each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted. Each of them also shall enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, including Sections 8 and 9 of this article, unless the exercise of such powers and performance of such functions is prohibited by its charter.

(B) Every other home rule charter adopted or authorized when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided in the charter."

Chairman Henry in the Chair

Explanation

Mr. Kean Mr. Chairman, fellow delegates, let me preface my remarks by explaining to you the purpose of the two paragraphs. At the present time, there are certain home rule charters, if we want to give them that name, or plans of government, which stem directly from a present constitutional provision. In the case of the East Baton Rouge Parish and the city of Baton Rouge for example, the plan of government for those political subdivisions comes directly from Article XIV, Section 3 (A) of the

Questions

in your Section 7 beginning with line 10, "each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted." That is by reference to prior constitutions, is that right?

That's correct.

Q. Well, that reference would be to the fact that there is no new constitution in effect, would it be not? I mean, don't you have a problem there to see a problem with that?

modified or repealed as provided in the charter of each of these municipalities, and there is no reason to go back to the original constitutional provisions except the one above.

I'm worried about...

in the state's largest swamp, there is pro-

the people of East Baton Rouge Parish without an

There would be no need to further
tution with respect to East
simply do it within the fra
constitutional provision.

100

and I wanted to ask you again, why the specific enumerations in the beginning of Section 7?

... Because Mr. O'Neill, these particular plays of government have achieved certain positive rights under their existing constitutional provision which we feel should be continued. If you do not make specific reference and ratify and confirm them by reference to the prior constitutional provisions, it raises a serious question in my mind as to just what the status of these particular plans of government would be. Under the circumstances, and to avoid any question in that regard we felt it desirable and necessary to include specific reference to them.

Mr. Brown Mr. Kean, are there

ated in this article?

Year No. si

if you refer to all home rule charters, how is the existence? Why do they have to be spect

Sean My point Senator Brown that when you talk about home rule charters, there are home rule charters and home rule charters, and that's the point I tried to make at the beginning. The East Baton Rouge, Jefferson, and that group in (A) stem directly from the constitution as it now stands. There are also several municipalities that have home rule charters which are based directly on the constitution, and under those circumstances, you just can't say "home rule charters are ratified and confirmed" because it leaves open to question, what happens in the case of Jefferson, for example, where you have a plan of government directly coming from the constitution, and we felt it was necessary to have that as a reference to ensure that those plans of government which have constituted themselves would continue to have that base or other serious question about the status of it.

Mr. Brown Well, did I understand you correctly when you said that if you want to amend the basic rule charter of say, East Baton Rouge Parish, or in your opinion you would have to do a constitutional amendment?

plan of government in 1855 before being elected.

of the last Baton Rouge plan of government, and

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New Orleans, have plans of government which were authorized by that constitution and if you take away that base it raises a question, in my opinion, as to the validity and the status of those plans. Under the circumstances we felt it necessary to continue some reference to the base upon which they were founded.

Mr. Duval Mr. Kean, the constitution has certain specific provisions, does it not, in setting up the home rule charters of the specific cities mentioned--parishes mentioned here, is that right?

Mr. Kean That's correct.

Mr. Duval These home rule charters will now be, as a result of this, not specified in the constitution, but sanctified by this provision, is that right?

Mr. Kean That's correct.

Mr. Duval Now, assuming this previously, let us say right now, in order to amend those home rules, the legislature amend those specific provisions in the constitution on the home rule charters by constitutional amendment?

Mr. Kean The legislature, I suppose, could propose a constitutional amendment which would do away with the East Baton Rouge plan of government, but in my opinion it could not change details in that plan of government, because, and this is the very point I'm trying to get at. Under the existing constitutional provisions only the people of East Baton Rouge Parish can change those provisions.

Mr. Duval If this provision is not included in our proposed constitution, but let us say, placed in the schedule, do you think this would have any effect on the integrity of the home rule charter plan?

Mr. Kean I do, because transitional material is designed to make a transition from one constitution to another situation, as for example, placing it in statutory material. It would leave open the question in my mind. First, what is the base for these particular plans of government? Secondly, by reason of being transitional material the legislature could thereafter do away with it.

Mr. Duval Do you think you could say all of this though, what you're saying in a simple sentence by saying "every home rule charter presently authorized, and which will come into effect before the adoption of the new constitution, shall only be changed as provided for in its charter?"

Mr. Kean Well, there are other substantive things that go beyond the change in the charter that has been developed by court decisions under the existing constitutional provision, and under the circumstances I would be concerned in what you proposed would not be broad enough to include that kind of substantive material.

Mr. Burns Mr. Kean, you provide in Section 7, the plans of government of these different cities, "shall remain in effect and may be amended, modified, or repealed as provided therein." Now, in view of that language and what you are seeking to do, is it necessary to have the cost of that section from beginning at "each of them shall," on page 8 down to 17?

Mr. Kean I think so, Mr. Burns, because as I have endeavored to point out earlier, there are certain substantive rights which have been developed under the existing constitutional provisions applicable to these particular municipalities and parishes. I'm concerned that if you don't have references to duties imposed by those provisions and additional powers and functions, it might be granted in some other section of this particular constitution. They might be jeopardized insofar as those, additional authority is concerned.

Mr. Poy Mr. Kean, by these substantive rights that have been developed, aren't you really trying to save some jurisprudential material and that you want to have ensconced in this constitution, jurisprudence that can never be changed?

Mr. Kean No, sir, I don't have...

Mr. Roy Well, what substantive rights can you save some jurisprudential material and that you want to have ensconced in this constitution, jurisprudence that can never be changed?

Mr. Kean No sir, because we're talking about two different things. One is the charter which is the governmental structure. The other is a substantive right that the government operates under. In the case of East Baton Rouge and Jefferson the courts have recognized that their particular constitutional provisions extend to structure and organization of those particular plans of government, and that the legislature cannot deal with structure and organization relating to them. I don't think that would be covered by a simple reference to the retention of the home rule charter.

Mr. Roy Well, then you are talking about jurisprudential interpretation of those charters.

Mr. Kean I'm talking about what the existing constitutional provisions mean.

Mr. Guarisco Mr. Kean, do I understand correctly, that the enumerations in this Section 7 of East Baton Rouge, Jefferson, etc., are the present constitutional home rule charters?

Mr. Kean Yes, sir, that's correct.

Mr. Guarisco Now, isn't it a fact that Plaquemines Parish is not presently a constitutional home rule charter?

Mr. Kean As I understand it, Plaquemines Parish has developed its plan of government specifically pursuant to Article XIV, Section 2 (B) or something like that.

Mr. Guarisco My question is, you've got every constitutional home rule charter in this provision; there are other home rule charters that exist around the state, however. Why did you only choose Plaquemines to constitutionalize when it wasn't constitutionalized prior to this?

Mr. Kean It was constitutionalized prior to this. It comes from a constitutional provision which authorizes parishes to adopt directly a home rule charter, and that's what they did. The other home rule charters that you speak of are pursuant to the provisions of Title 33, and do not stem directly from the constitution, as in the case of the city of DeRidder.

Mr. Guarisco Why does your comment indicate something different about Plaquemines?

Mr. Kean I don't know. I didn't write it.

Mr. Goldman Mr. Kean, wouldn't the fears that you expressed regarding those home rule charters by constitution be allayed, and lines 3 through 17 be able to be deleted completely if Mr. Champagne's amendment read "every home rule charter or system of government, whether by constitution or otherwise, are hereby authorized to remain," etc?

Mr. Kean Well, I think that would take care of the reference to both kinds. The further question that I raise is that there is a difference between the structure of the government, whether it's going to be a council-mayor, type of government...that sort of thing, which is normally what you're talking when you're dealing with a home rule charter. My point is that in connection with certain of these

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of them shall also enjoy such additional powers and functions as are granted to local government subdivisions by provisions of this constitution unless the exercise of such powers and performance of such function is prohibited by its charter.

Now, in our committee one of our heated 8-7 votes was the problem where you have unincorporated settlements under home rule charter not being allowed to incorporate, particularly when the charter prohibits it. I would suggest to you that, and I... respect the comments, but I would say that I would have to oppose Mr. Champagne's amendment on that basis because in Section 11... Section 11 can be construed as in the grant of additional powers to a home rule charter and... I don't know... and I... talked with Mr. Keen about it and my suspicions are--and I don't think it's Mr. Champagne's is that this is a back doorway to really delete Section 11. Now if the convention for its wisdom, when we got to Section 11 would do it, then I would have no problem, but I'm... kind of leery about the fact that they are prohibiting things contained in some home rule charters and if we, by a constitution convention, says that you should have these powers and we want to grant this to the citizens under home rule charter and you know... no... and the home rule charter says well, no, you can't even exercise it, then I wonder why we even grant it to them, particularly if you want me to mention by name we are talking about the Scotlandville area, the central area of Baton Rouge. I understand that there have been a couple of areas up in Shreveport that have desired for some incorporation. Now, you know some of the proponents of this say well, that's noneffective. I wish somebody would get up here and clearly say to me that this only pertains to Sections 8 and 9 and not really stretches to Section 11 which I would ask the convention, let us argue that out when we get to Section 11.

Question

Ms. Zervigon Mr. Jackson, I agree with you that I would rather fight that one issue as a single issue when we come to Section 11. So would it not be possible in your judgment, for example... the person who is going to explain Section 11 on behalf of the committee to first introduce a... section... an amendment that would say "notwithstanding anything else in this constitution" and then gone on with Section 11, and then that way isolate that issue. Would that be possible and would that help...

Mr. J. Jackson That would somewhat help, Mary. As you know, Section 11 is going to be a very hot... heated issue in this convention and let's say if you adopt the section and not allowing an amendment for notwithstanding, then we are in trouble. Then again, I'm not sure and... all I'm asking is that somebody come up here and explain to me the meaning of... of the ramifications other than Section 11 of that last paragraph... I mean the last sentence to this, because I'm not sure if there are some things that we want to grant to home rule charters that is going to require some... to say, you know--that, for instance, New Orleans couldn't probably take advantage of it if we got prohibitive language that was done...

Further Discussion

Mr. Arnette Ladies and gentlemen, I was in favor of Mr. Champagne's amendment as he had originally proposed it, but now that he has added this additional language, it greatly worries me the same way the original committee proposal does. If you look at both sets of language, it has a sentence which contains "each shall be subject to the duties imposed by..." the applicable constitutional provisions under which its plan or charter was adopted." Now, this language greatly, greatly worries me for the simple reason that in this one sentence we have incorporated about twenty pages of the 1921 Constitution and this is a very, very

bad thing to do; because when we do this, if any of these duties need to be changed at any time in the future, any of these duties listed in the 1921 Constitution, you have to provide an amendment to this constitution. This is a very bad situation to have. What this means is, is that what my people sent here for me to do was to keep them from voting on amendments affecting just Orleans or just Shreveport or just Baton Rouge or any of these other towns, and if we leave this sentence in there, we are creating a very big problem because you are going to have to vote on these same amendments just affecting certain localities and I can't stress this enough--it's a really, really bad sentence to have in a constitution. Anytime you incorporate a previous constitution by... a mere sentence, you are asking for problems, but this puts back in this constitution, the thing that we had worked with our previous constitution, all this particular local matter and we need to take that out. So I urge you to defeat this particular amendment. Thank you.

Questions

Mr. Burson Greg, as a new lawyer, do you see the problem that caused the committee to put this language in there that if the only basis for a home rule charter is in the constitution and you eliminate any reference to that charter in the new constitution, that you may no longer have any legal basis therefor?

Mr. Arnette Well, wouldn't it be just as easy to say every home rule charter now in existence shall remain in existence? Isn't that an authority enough?

Mr. Burson Except that the difference, as I read the amendment that Mr. Champagne adopted, is it would include all home rule charters presently in existence which would go much further than the committee proposal which includes only constitutional home rule charters.

Mr. Arnette Well, if you look at the committee's proposal Paragraph B, it says every other home rule charter adopted or authorized when this convention was adopted shall remain in effect, etc., etc. So his goes... the committee's proposal includes all these other home rule charters anyway, but the problem I see and the thing that I really worry about is having that language in there. You have incorporated about twenty pages of the 1921 Constitution and if you want to change any of those twenty pages in the old constitution you have to amend the new constitution and this is a very, very bad situation to have.

Mr. Burson Don't you think that that fear is covered by the fact that you say that these charters may be amended, modified, or repealed as provided therein in the charters?

Mr. Arnette Well, the charter may be amended, but not the duties as set forth in the constitution because you have said here "it shall be subject to those duties" and if something is set forth in the constitution, then it can't be changed by an amendment to the charter because the charter itself may be changed, but not what's in the constitution providing for those duties and etc., etc., that are in the old constitution.

Mr. Burson But when you say that they shall be subject to duties imposed by the applicable constitutional provisions, don't you think that this is a transitional matter which refers to the fact that there are many duties imposed upon these charter forms in those twenty-one pages you spoke about, which may not be part of their present charters, and that they have still got to perform these duties until such time as they are made a part of the charter.

Mr. Arnette Well, Mr. Burson... I think that might be a fine idea which you have there except I don't think that's the way to do it because what we have done is incorporated all those duties in our new

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whether you turn it upside down or sideways. It says very simply and plainly that "the provisions of this constitution shall be paramount and neither the legislature nor any political subdivision shall enact any laws or ordinances in conflict therewith. I just don't see how you can read that in any other way than what it says and I have... had some jest directed my way about putting a supremacy clause in a local government article and I will admit you can probably find a better place for it, but it... the fact that it is there was occasioned by exactly the problem that was raised by some of the earlier speakers. Now, the second point about all of the amendments that we have had to vote on regarding local matters: It seems to me that after sitting on Local Government Committee for six months in committee hearings and sessions that it became rather obvious to me that most of the local amendments that we'd had to consider in this state were generated by special boards like the Sewerage and Water Board, the Board of Liquidation of City Debtors, City of New Orleans, etc., much more so than any amendments that had to do with any charter. I don't ever recall voting on any amendments that had to do with the charter and these special boards we have recommended be taken out of the constitution. Frankly, I do not see the problem that some of the other speakers have seen with regard to requiring an amendment to change charters. I don't believe that that's what that sentence says. It simply says that "these home rule units shall be subject to the duties imposed by the constitutional provisions under which their plan or charter was adopted. I believe, as we say in lawyer language, this has to be read in "pari materia"... or together with the preceding sentence or... rather the sentence---the second sentence which says that "any of these charters can only be modified or repealed as provided by the charters and definitely if you read those two things together, I don't see how you can come to the conclusion that it would take a constitutional amendment to change it. This whole area of home rule charters is somewhat esoteric and I think that in order to understand it, you've almost got to look at what's in the present constitution, and if you look under that digest that the staff has provided with them, you can come to the articles: Article XIV, Section 3A, 3C, 22 and 37, which provide in detail for the establishment and operation of the plan of government for East Baton Rouge, Jefferson, cities of Baton Rouge, New Orleans and Shreveport, and the present constitution Article XIV, Section 3D, which provides in detail for the adoption of a charter form of parish government which has been utilized in Plaquemine Parish. Now, this is one of the difficult problems in writing a new constitution. How do you move from a constitution which has these specifics in it. I suggest to you that we have done it the only way you can.

Further Discussion

Mr. Pugh Mr. Chairman, and fellow delegates, I, like one of my predecessors here, like the first sentence of this proposed amendment. I'm very much disturbed about the balance of it, however, and even more so, I'm disturbed about this reference to Section 30 yet to come up. Let's stop and think about it now. In Shreveport we have a home rule charter. The courts have already determined that in connection with that home rule charter, structure and organization is not applicable to it. Now, if we think that when we get to Section 30 that we are going to repeal home rule charters, every city superior to the state of Louisiana, we don't believe have home rule charters tonight. Now, they stated that it's paramount, when you talk about it being paramount, you're talking about wiping out all of these provisions. I don't believe that's what we ever intended. I don't believe what we intended to do is to have a structure in connection with the existing charters in the fashion in which they have been operating and I'm afraid that the least language that's contained in the second and third sentence of this proposed amendment will raise serious

doubts about their ability to do so. I ask, therefore, that you give serious consideration to defeating this amendment and that then we reconsider the subject in the light of the subsequent amendments that have and will be filed. Thank you.

Questions

Mr. Avant Mrs. Pugh, Mr. Burson used a technical legal phrase awhile ago that interested me very much. He spoke of reading these things in "pari materia" which means you've got to read them all together but I direct your attention to the sentence in this article... or this section which says, "each of them shall retain the authority, powers, rights, privileges, and immunities granted by its charter." Then flip over to Section 10 which reads "powers and functions of local governmental subdivisions shall be construed liberally in favor of such governmental subdivisions." Then flip over to No. 30 that Mr. Burson referred to and read that, and reading all that together, can you give me any idea what it means?

Mr. Pugh Yes, I can tell you that when you get to that word "paramount," you're in trouble. This "pari materia" sounds awful good, but when you get to the word "paramount," you done said what there is to be said about the subject. I like the first section saying that whatever is in the charters, whatever they have been provided for, they shall continue to have. From there we can't go down; at best we can go sideways. That's the point I was trying to make about monkeying with these charters.

Mr. J. Jackson Mr. Pugh, if you look at the Champagne, Fontenot amendment and if you read it the way I'm reading it, just take away the home rule charter, let's talk about Lawason Acts, municipalities operating under Lawason Act---. "Every plan of government adopted or authorized when this constitution is adopted shall remain in effect and may be amended, modified or repealed as provided in the charter." Now, the Lawason Act, as I understand it, are established by acts of the legislature and the procedure now is that the legislature amends, modifies, or repeals. I just wonder, you know, what kind of effect by using this as "provided" in this charter, when we are talking about two plans of government, saying every plan of government plus home rule charters, what kind of effect is that going to have on Lawason Act cities and municipalities? I don't know.

Mr. Pugh Frankly, I don't find any quarrel with the first sentence. I really don't, but thereafter it leaves me cold for the reason I mentioned a minute ago.

Mr. Kean Mr. Pugh, you...you made some comment about the city of Shreveport had a constitutional provision that authorized a home rule charter and that the courts had construed that as not giving to Shreveport the plenary right with respect to structure and organization, am I correct, sir?

Mr. Pugh That is correct. That's the Bradford case, happened to be my case...used ahead.

Mr. Kean Now if...if we only had the first sentence of the Champagne amendment, would that not put the parish of East Baton Rouge and Jefferson which do have the structure and organization provisions in their constitutional provisions now, would that not put those two parishes in the same position as Shreveport is in the Bradford case?

Mr. Pugh No. I think what he is saying in this sentence is, "every plan of government or home rule charter adopted or authorized shall remain in effect." I think what he is saying is that they may like they are.

Mr. Kean But the structure and organization provision that we are talking about is not in the charter in the case of East Baton Rouge Parish and Jefferson; they...those provisions are in the con-

stitution, are they not?

Mr. Rugh: That is correct. From the first sentence on I agree wholeheartedly with you that that effect can occur. That's why I say we're really... we're about to fiddle around with some charters here and I think we have got to leave these charters the way we find them, and then from there on we'll worry about these other provisions that may or may not be paramount.

Further Discussion

Mr. Fontenot: Mr. Chairman and fellow delegates, I'm in support of this amendment; my name is on it; I'm a cosauthor and the reason Mr. Champagne and I got together and came up with this proposal was... we tried to compromise some of the arguments pro and con of the suggestion that we just delete the whole first paragraph and just stick with B. So Mr. Champagne and I got together with Mr. Kean and we thought we came up with the best solution to the problem. Apparently, a lot of people have picked apart our amendment and I don't know if it's going to pass or fail. I would hope that the people would vote for it because we think it's better than what's proposed and if it's not... and if you want to take out part of our proposal, come up with an amendment to amend ours. Let's don't go back to the committee proposal. Our main intent was to do away with the words and specific language which dealt with the specific parishes of East Baton Rouge, Jefferson, Plaquemines, New Orleans, Baton Rouge and Shreveport. We're setting a bad precedent if we have to start naming specific parishes every time their form of government is a little bit different or their school board district is a little bit different or their... any other thing that... that pertains particularly to these parishes. We're setting a bad precedent if we have to name them in the constitution. This was our intent, Mr. Champagne and I, of not naming them specifically in the constitution and we tried to work out a compromise, but apparently a lot of people are against it, and I just would wish that most people would vote for it. At this time, I move the previous question.

Mr. Champagne: Mr. Chairman... amendment... then I was approached by members of the committee. I'm now informed that most of the committee is going to vote against it, but it matters not to me. My point in bringing the amendment in the first place was simply to carry out a message that I had from the people to eliminate as much as possible specific reference to parishes and cities in this constitution. It is a constitution for all people, all the people of the State of Louisiana. I did not know that in making this simple amendment, as I proposed in the first place, that I would get the wrath of all those individuals who are not in agreement with the committee proposal. I simply... it. I only left out the names of the... and the names of the people involved. I only intended and it matters not to me whether I win or lose, but I have done what I

to ask about... and the committee proposal, things that we don't all understand.

this amendment, then you have the amendment as proposed by the committee which gives you the names and the listing of all of these parishes and cities. If that's what you want and I was told by one of the members of the committee that this is a location of high populated areas. When they see the name in there, they are going to vote for it. I want to tell you that the rural areas, in the backwoods, and so forth, it works the other way for them, too.

Mr. Casey: Mr. Champagne, I'm very concerned about the wording of the first sentence in the amendment. Is it your intention... and I want to establish as the intent of the convention if the amendment happened to pass, I'm just concerned... is it intended that this first sentence refer to every form of government or home rule charter which is now in existence when the constitution is adopted?

Mr. Casey: But, I'm just concerned that whether this first sentence really says that, because... it could read is that when this constitution is adopted, it could refer to some other form of government or home rule charters that may be authorized at that time. I really don't think it says exactly what you want it to say. Do you hear?

Mr. Champagne: I agree with you, Mr. Casey. I told you, you get up here with an amendment, you have a clear-cut decision and then they... I have anything.

Announce

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Thursday, September 20, 1973

ROLL CALL

[Roll call proceeds.]

PRAYER

Mr. Champagne Let us pray.

Lord, make me an instrument of Your peace. Where there is hatred, let me sow love; where there is injury, pardon; where there is doubt, faith; where there is despair, hope; where there is darkness, light; and where there is sadness, joy. Oh, Divine Master, grant that I may not so much seek to be consoled as to console; to be understood as to understand; to be loved as to love, for it is in giving that we receive; it is in pardoning that we are pardoned; it is in dying that we are born to eternal life. And if it pleases You, dear Lord, may You smile occasionally upon this gathering, for Lord, just a little smile makes all the disappointments disappear quietly into the night like a cool summer breeze on a summer night. We ask these things in Your name, Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Goldman Thank you, Mr. Chairman.

Fellow delegates, I am going to make this short, and I don't want you to misunderstand me, because what I am going to talk about, I don't want you to think that that, at all, labels me as being here representing radio and television or news. I am here representing the general public, the public at large, and every person in this state. But the subject matter about which I am going to talk is one that we discussed here quite at length several weeks ago when we were discussing the Bill of Rights. That is on freedom of expression. During that discussion when we were talking about that last sentence in there about everyone had the right to publish, print, speak, photograph, etc., what they wanted to without censorship, the discussion centered around news people who would never be licensed. That was an impossibility. And I was surprised to learn when I got back here Wednesday in talking to individual delegates, that not a one of them had found out, as yet, until I talked to them, that the State of Alabama, in its wisdom, the legislature of Alabama, just before it adjourned about a week ago, passed a law which was on another subject, but tacked on to it was an amendment which required, or which prohibited, any newsman in the State of Alabama from attending any public body meeting, including the legislature, without first getting a license from the State of Alabama.

Now Governor Wallace signed that into law, regretfully, and said he didn't want it in there, but he wanted the rest of the bill and this is the only way he could get it. Now he, and the others, even those who put the amendment in and had it passed, feel that it's not going to be constitutional. But that's beside the point. I don't know how long it will take the Alabama Supreme Court to rule on this. In the meantime, it's the law of the State of Alabama. The Alabama Legislature is not in session anymore, and it may have to go to the Supreme Court of the United States. But regardless of whether how quickly they declare that unconstitutional or not, think of what a fool the legislature of the State of Alabama is going to be made to look like in the eyes of the public.

So, it can happen, and I hope we have some way of getting this no licensing business in sometime. Thank you very much for your attention.

Questions

Mr. Brown Mr. Goldman, I read that Alabama statute, too, because I was interested in it. It looked real appealing to me. And the question I want to ask you, I think you are wrong. Is it not

correct, they did not require the press to be licensed? It said that all public officials had to file financial statements, but anybody covering the legislature or any public body, any reporter, also had to file a financial statement. Is that not in effect what was said?

Mr. Goldman He had to go a lot further than that. He had to file a financial statement...

Mr. Brown I've got a copy of it, you want to see it? It said they had to file financial statement.

Mr. Goldman He had to go a lot further than that. He had to file a financial statement... Let me answer your question. He had to file a financial statement, he had to state what pay he belonged to, he had to tell who he worked for, he had to tell how much money he made, he had to tell who he represented, and he had to get a permit.

Mr. Brown That sounds pretty good. Why don't you offer that as an amendment to this constitution?

Mr. Goldman Well, if you like it, you can... you know... pass it in the legislature, because you are permitted to right now, if this constitution passes.

Mr. Tapper I'm just wondering, you know what you said is very interesting. I also read the report of that and I'm just wondering if you believe that maybe the people who report the news, and sometimes they are accused of slanting the news one way or the other, don't you think they should be under some restrictions?

Mr. Goldman No, I don't think a newsman should be under any restriction to report the news. I think if he wants to make a comment, as long as it's labeled commentary, I think the American public has enough sense to decide for themselves whether they agree with him or whether they disagree with him.

Mr. Chairman, I didn't mean to get into this long discussion. I just wanted to give them some information I thought most of them didn't know, but I know now, realize that since I mentioned it to some of them, some of them have gotten the information, and that's a good thing.

Thank you very much.

REPORTS OF COMMITTEES

[I Journal 503]

Mr. Poynter Mr. Aertker, Chairman on behalf of the Committee on Education and Welfare sends up the following report:

Chairman, delegates of the convention, directed by your Committee on Education and Welfare to submit the following report, Delegate Proposal No. 1 introduced by Delegate Asseff-reported unfavorably.

Delegate Proposal No. 22, Delegate Denney-reported unfavorably.

Delegate Proposal No. 28, by Delegate Denney-reported unfavorably.

Committee Proposal No. 9, introduced by Delegate Aertker, Chairman on behalf of the Committee on Education and Welfare-is reported with amendments.

Committee Proposal No. 10, by Delegate Aertker, Chairman on behalf of the Committee-is reported with amendments.

Respectfully submitted, Robert Aertker, Chairman of the Committee.

Mr. Aertker sends up further report from Education and Welfare that Delegate Proposal No. 65, by Delegate Roy-is reported with amendments.

Respectfully submitted, Robert Aertker, Chairman of that Committee.

UNFINISHED BUSINESS

THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government and other delegates, members of the committee. A proposal making general provisions for local and parochial

to:

And the status of the proposal at this state is that the convention has adopted, as amended, Sections 1, 3, 5 and 6 of the proposal, and has voted to delete Sections 2 and 4 of the proposal; presently has under its consideration Section 7 of the proposal. Mr. Chairman, there are a number of pending amendments to that Section 7.

Amendment

Mr. Kean Mr. Chairman and fellow delegates, yesterday I... Delegate Duval took the committee task because we hadn't adequately explained the various types of home rule charters and governmental operations that exist in Louisiana. I am having prepared, and will have for distribution in just a few minutes, an outline of the various kinds of charters, governmental provisions which are applicable to the municipalities and parishes so that you, along with Delegate Duval, will have that information for your further consideration as we proceed with the article.

Vice Chairman Casey in the Chair

Amendment

Mr. Poynter I believe this amendment is being passed out at the moment. There have been a number of Pugh amendments out. This one has three paragraphs in it, (A), (B), and (C). I think it's the last one to be passed out.

Amendment No. 1, on page 3 delete lines 2 through 21, both inclusive in their entirety and insert in lieu thereof the following:

"Section"... (and, Mr. Pugh, if it's all right with you, let's keep the numbers at 7 because we're cutting some in and taking some out, etc... make it Section 7.)

"Section 7. Home Rule Charters and Plans of Government

Section 7. (A) The local governmental subdivisions existing under home rule charters or plans of government at the time of the adoption of this constitution, shall continue to have all of the authority, powers, rights, privileges, immunities, obligations and responsibilities as therein provided for.

(B) Subject to the provisions of Paragraph (A) herein, the legislature by general law, shall provide the manner in which local governmental subdivisions within the boundaries of a single parish, may by a majority vote of the electors of the local governmental subdivision adopt, amend or repeal a home rule charter or plan of government and the powers, rights, privileges, immunities, obligations and responsibilities which may be provided for therein.

(C) Except as otherwise provided in this constitution, the structure, organization and form of home rule charters and plans of government shall be reserved to the local governmental subdivision affected thereby."

Mr. Poynter As we left this business yesterday, I suggested to you the problems about our attempting to go into the various home rule charters within

government shall continue to have everything they presently have. Moving on to (B), it's a provision whereby those that "want 'em can get 'em." (B) provides that the legislature shall provide for,

plan of government. Paragraph (C) has one sole

any one of a number of for everybody, they do at home by true home rule.

earned. This amendment, therefore, as I remember does three things: it protects everybody to have a home rule charter; it provides for a method whereby anybody who ever wants a home rule charter can do it; thirdly, it provides that the legislature can tell us up in Shreveport that they don't like our commission form of government; they want us to take another form and this is it.

I yield to questions.

Questions

Mr. Avant Bob, this is probably a nit-picking question because I think I understand what you are trying to say, but I'm going down to (C) and the way it reads, it says "the structure, organization and form of home rule charters and plans of government", to me meaning the document itself. I wondered if you would object to adding to where it would read, "form of local government under home rule charters and plans of government."

Mr. Pugh That's perfectly alright. I started out by just using "form", and by advice of one who I have a great deal of confidence in, I added "structure and organization".

Mr. Avant Well, I'm not talking about that. It seems to refer to the charter and the plan of government rather than to the document. It refers to the document and not the government, in other words. Do you follow me?

Mr. Pugh Went where

Mr. Lanier Mr. Pugh, this Paragraph (A) says that it applies to local governmental subdivisions existing at the time of adoption of this constitution. Is that correct?

Mr. Pugh That's correct.

Mr. Lanier That would not apply to home rule charters that are not in existence at the time of the adoption of the new constitution, is that correct?

Mr. Pugh That is correct. I also told you that I would tell this whole body that I would support an amendment by you providing for "as existing", or "as provided for", or whatever language you wanted to use today.

Mr. Lanier Well, what I want to bring out to the body is that were you aware that the City of Thibodaux has adopted a home rule charter, but will not come into existence until January 1, 1974?

Mr. Pugh I was not, and told you here I will support the purpose of providing for Thibodaux

Thibodaux

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in favor of that.

Mr. Burson Mr. Pugh, I've got some technical problems with the language in (B) that says, "two or more local governmental subdivisions within the boundaries of a single parish may by a majority vote of the electors of the local governmental subdivision adopt" so on...a home rule charter. Does that mean that Opelousas and Port Barre could get together in St. Landry Parish and create a home rule unit that would be separate and distinct from the parish and the municipalities?

Mr. Pugh If I understood, your question was whether or not two governmental bodies in two different parishes could do it? No.

Mr. Burson No, no. Within the same parish.

Mr. Pugh If they are in the same parish, and they want to have it, then I'd be the last one to prevent them from doing it. I put this in specifically for Mr. Sandoz who wanted that for his parish.

Mr. Burson You mean that two cities that might be separated by eight or ten miles, could get together and form a home rule unit within a parish?

Mr. Pugh If those two cities are dumb enough, or smart enough, as the case may be, to do that, why prevent them? Why should we tell them they couldn't do it?

Mr. Brown Mr. Pugh, will you tell me your intention on your amendment? You have in paragraph (B), you say, about the fourth line down in paragraph (B), "by a majority vote of the electors."

Mr. Pugh That's right.

Mr. Brown "By the electors." As I interpret that, that means fifty percent of all registered voters. Did you mean that fifty percent of all registered voters, not voting in the election, but who are registered throughout the entire area concerned, did you mean to make it that stiff? Because you are really talking about, probably, seventy percent. You'd have to get a heck of a lot more than the majority because of the numbers there.

Mr. Pugh I see nothing wrong with the majority of the people who are going to be affected, bearing in mind that when you have a home rule election, you ain't talking about a simple election. You've got all kinds of people for or against, and don't worry, the people turn out. There's no reason why there should be a change in form of government if at least fifty percent of the electors don't want that change.

Mr. Brown Well, why raise the question? I've seen some figures, I think, by LSU or someone, that says that in an election such as this, home rule charters election probably would get sixty, sixty-five percent of the vote at the very most. That's probably too high in any election. That being the case, that would be a tremendous problem in getting fifty percent of the voters out of that sixty percent who go to vote, to vote for the thing. You would have to have eight-five, ninety percent of those voting, voting for your home rule charter. Do you think we'd ever get a home rule charter passed in the future?

Mr. Pugh If you feel that you have, with some certainty, a mathematical figure, I will be happy for you to amend this to supply that mathematical figure.

Mr. Brown You feel that it's not to be more than a majority of those voting, though, in terms of philosophy?

Mr. Pugh Yes, that's my opinion. But that's just mine, you know. I'm certainly not saying I wouldn't support an amendment if you or I could show

me some satisfactory percentage. That's fine.

I might further answer, I think you ought to have a minimum percentage as well as this maximum there. In other words, I think you ought to have a certain percentage that are voting and then take a percentage of those.

Mr. Nunez Mr. Pugh, my interpretation of (B), let's take an example because I'm concerned with, let's take an area like...well, let's take Jefferson Parish where you have the city of Harahan on the east bank, and the city of Gretna on the west bank. Suppose they decided to form a home rule charter between the two and they vote accordingly, according to your...follow your (B) here, and they vote to do it.

Mr. Pugh Yes.

Mr. Nunez What would happen with the people in between?

Mr. Pugh You mean the people that didn't vote for it?

Mr. Nunez That's right. What would happen...how would you form it? Would you...should you have a continuous boundary or something to go ahead and form this?

Mr. Pugh Well, I'm going to reiterate that Mr. Sandoz has some problem he wants to resolve. He feels that this will do it. I will again state that if two cities within a parish elect to join together for the formation of a government, then I say you ought to be able to do it. That's up to them, not us.

Mr. Nunez But my point is, there are some parishes that have three or four cities within the parish boundaries that would not be contiguous with the other cities, and according to this, they could call an election, as such, and form one home rule charter for two different areas that are within the parish boundaries but are not contiguous. We're solving, don't you believe we are solving one problem and might be creating a lot of other problems with this amendment?

Mr. Pugh Man, as I understand home rule, that means that, brother, you can do what you want to do at home.

Mr. Roy Mr. Pugh, in answer to Mr. Nunez's question, the first sentence starts out of (B), that "the legislature by general law" shall perform certain functions which will then permit the issue to be brought to the people. Isn't that correct?

Mr. Pugh That's correct.

Mr. Roy Well, don't you think that if the legislature has two cities ten miles apart, that it tries to allow to organize under a home rule charter, that if it doesn't allow the people in between to vote on it, that you are not going to have a contiguous home rule charter, will you not?

Mr. Pugh It's absolutely correct that the legislature...
Go ahead.

Mr. Roy But still, those two cities will be operating under one home rule charter.

Mr. Pugh That's correct.

Mr. Roy And the probability is that any time legislature would provide that all the people who are going to be affected will have to vote on it, won't it?

Mr. Pugh Sure they will. I've got more faith in the legislature than a lot of people. I'll put it that way.

Mr. Arnette Mr. Pugh, just a quick question.

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Mr. Pugh: I want to emphasize again that these home rule charters that are now in existence shall have all the authority, powers, rights, privileges, immunities, obligations, and responsibilities as therein provided for. Would they still have those rights even if they were against this constitution? In other words, if we have a constitutional provision against one of the rights they presently have, would they continue to have that right?

Mr. Pugh: Are you asking me if some people in a city vote against this constitution, but it's passed, will they have those rights?

Mr. Arnette: No, what I'm asking you is, suppose we put a provision in the constitution that you can't put out bonds more than so much in amount or something like this. But in their home rule charter, it says that they can. Would they still be able to do it?

Mr. Pugh: Yes, I am of the opinion that.

Mr. Arnette: I think that's the way it should be. I think that's the way it should be. I think that's the way it should be.

Mr. Pugh: I don't think you can take...you know, I think maybe it's one of philosophy or legal interpretation, but these people have got their charter. Now, I don't know how we as a group can tell Orleans they can't do something that they already have the right to do, if that's your question.

Mr. Arnette: Well, Mr. Pugh, we've already passed several things in this new constitution that tells people they can't do what they've been doing.

Mr. Pugh: Well, it depends on the authority which they were previously doing it, now. Let's...you know...let's put something in proper perspective.

Mr. Jenkins: Bob, Mr. Arnette has raised the question that is really troubling me about both your amendment and the proposal itself. Doesn't this really mean that, for instance, our Bill of Rights means nothing if a home rule charter has given a municipality something contrary to it in the past. For example, under the right to property section. If the home rule charter currently gives a municipality authority to expropriate property just at whim and without trial by jury, etc., wouldn't this mean that that Bill of Rights provision we adopted means nothing?

Mr. Pugh: I believe that if we adopt this constitution, Orleans will be able to do what they have been doing. If you want to amend this to provide, "except as otherwise provided," then we'll leave open the legal question of whether or not we can legally do it.

You're not going...

Mr. Casey: Are you ready for...

Mr. Pugh: Excuse me. You're not going to avoid the obvious problem of what do you have when you have a home rule charter? It's here. The people have got it. You've got to leave them where they are insofar as their charter is concerned. We can't rewrite every charter for everyone of these cities in this constitution.

Further Discussion

Mr. Pugh: There have been a number of questions asked which raise serious doubt about the language and meaning of the amendment. But primarily, it seems to me that we are now beginning to mix apples and oranges in one amendment and trying to talk about it all at the same time.

The section which is under consideration by the committee is intended only to deal with those existing home

rule charters which are in existence and not affect those which are not. This may be taken up under it.

Now Mr. Pugh has lumped into this same provision those which are not in existence and we will have to be separately considered and debated by this committee. I think that we should take a different way to operate. We ought to take Section 7 and dispose of it and then we'll get to Section 8 and talk about the method by which we are going to create new home rule charters. I think we are simply getting a mish-mash of discussion. It makes it difficult for us to follow the intent of the author and the debate about it, and it seems to me we ought to defeat this amendment and come back to Section 7 and take it up and dispose of it without further delay.

Questions

Mr. Pugh: The committee that drafted the committee proposal, are

Mr. Pugh: Yes, I am.

Mr. Pugh: Would you be kind enough, for me, to tell me the difference between the committee's language, "each of them shall retain the authority, powers, rights, privileges, and immunities granted by its charter." And what I have said in Section 5 about the retention of all of those, except I went one step further and said "they'd also have the obligations and the responsibilities."

Mr. Keane: Mr. Pugh, I'm not talking about any difference between what you propose in your 5 (A), and the difference that I might find between our Section 7 (A). My point is that you have included in the discussion of 7 (A), the items which are under 8...Section 8, and it simply becomes then...we get all mixed up in our discussion about what we are talking about. And I think we simply ought to talk about 5 (A) that you have, and 7 (A) that we have, and then we'll move on to the next question of home rule charters in the future.

Mr. Pugh: You then believe that we should separate into different sections each of these things relating to the same subject, home rule?

Mr. Keane: My point, Mr. Pugh, is that with respect to Section 8 which the committee has proposed as a means for adopting future home rule charters, the committee had a certain philosophy, a certain approach in respect to that section. We would like to have an opportunity to explain it.

If we are now going to take it up in one lump sum to deal with items in Section 7 and Section 8, it becomes difficult to do that without causing a great deal of confusion. I'm simply suggesting that if you'd delete (B) and (C) from this present amendment, that then we can argue the point based on Section 7, which is really before the convention.

Mr. Pugh: I think that if this section is adopted, the committee has proposed it, or substantially in any way, that the committee would not move to consider and table the motion with regard to Section 7 open to us?

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this process, I think if you will compare the committee proposal's sections 7 and 8 with this amendment, you will see that some very critical and very important rights, which are given to the people, have been excluded. I think that this is the basis for you to justify a vote against this amendment.

One technical problem with this amendment, as I pointed out in my questioning of Mr. Pugh, is that at the time it was drawn up, it did not take into consideration that would happen to home rule charters that had been authorized but which would not be in existence at the time of the adoption of the new constitution. My home town, Thibodaux, happens to fall in this category. We have adopted a home rule charter, but it will not become effective until the end of 1974. And the way this thing is drafted, ours would not be ratified.

Now, if you will go to Section 8 and review its provisions, you will see that what is being attempted there is to give a direct grant of home rule charter-making authority from the constitution to the people. There is a provision for an initiative, but in there. If your local governmental unit does not wish to call a charter commission as it is authorized to do in the constitution, then the people themselves can ask for the calling of a commission by a fifteen percent petition. Now this is very critical across our state, that the people be given this right and power. If you are in a place where you are aggrieved by your existing government, or you feel that a new form of government is necessary for the orderly handling of your governmental affairs, should you not have the right to all a commission to make a home rule charter to decide the manner in which you should be best governed on the local level? This is a very basic and a very sensitive right. The has not been included in the amendment that is before you.

If you will look at some of the other provisions, you will note, for example in Paragraph (G) of Section 8, it says that "the powers and functions of a parish or city school board, and the offices of sheriff, clerk of the district court, coroner or assessor, shall not be affected by a provision of a home rule charter as plan of government." This protection is not provided in the amendment that is before you. Before you vote on this point, I really counsel you to think long and hard about this type of protection.

You have a Section (D) which is a direct grant to the people to provide for the formation of multi-unit home rule charters. In particular, right now in the State of Louisiana, you have such a charter in the city of...and parish of East Baton Rouge. It is called a city-parish charter. It combines all of the units, I think there are five municipalities, and the parish government. This could only be done by a constitution amendment that everybody in the state had to vote on.

Section (D) provides, in the constitution, the method that this can be done on the local level. Right now in Lafayette, and it was Mr. Chatelain, E.J. Chatelain of Lafayette, that brought this matter to our attention, they have been asked to do this, or at least, a charter commission to attempt to do this, since 1970. But you know what the fate of constitutional amendments is in the State of Louisiana. Why should the people in Lafourche Parish or Jefferson Parish or Bienville Parish have to vote on whether or not Lafayette should have a home rule charter? That should be Lafayette's business. And the mechanism should be set up in our constitution for Lafayette, if they wish, to join their five municipalities and their parish government, to make such a charter. Why should this not be available to the people?

The amendment before us does not provide the mechanics for doing this. It merely says that it shall be up to the legislature to do this at some time in the future that is not prescribed. I suggest to you that this is a matter of such magnitude, that the basic procedure should be included in our constitution...It is a right of the people and I ask you to defeat this amendment and preserve this right, as drafted by the committee.

Thank you very much.

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I have been sitting on this committee since January of this year, and we've gone through many, many hearings about all the problems involving government in Louisiana, local government. As we went across the State of Louisiana in our area meetings, a composite committee and other committees, and the local meetings we've had in our area of south Louisiana, the thing that came up the most often was the problem of local government. As you well know, in the last many years most of the amendments to the present constitution were brought about because of the problems in local areas. You are asked to vote upon problems all over this state, when in fact, you didn't have the time, nor perhaps the desire, to look into the problems of those local people. This Local Government Committee is attempting to give back to the people of Louisiana the government they rightly deserve. I ask you please to take your time; spend a few serious minutes here today and the days to come, and look at the thing squarely in the face. Many, many areas of this state have problems. Our committee has attempted to solve some of these problems, and with your help and contribution, I know we can do a good job. We came here to write a new constitution that will take care of the problems of today and a constitution that our people in the future could live by. I ask you to look long and hard at these amendments as they come up before you, because this committee has worked hard, and real hard, in endeavoring to try to solve these problems and present something to this people of this state they'd be proud of. Let's look at them and look at them hard. As we go along I think you're better off to do as we've done in the other four proposals we've accepted, accept them article by article, or section by section, rather than trying to lump three or four of them together before you have the opportunity to hear the debate on each, before you'd be able to hear the committee's report and why the committee came up with these various suggestions and sections of this proposal. I would ask you to please look at it long and hard. I would ask you to please defeat the amendment before you now. Thank you.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I'm concerned about this amendment, and I'm concerned about the committee proposal. I had to read it a about five or six times before I really got the full impact of it, but the meaning of this section is that nothing in this constitution, none of the rights and privileges which have been granted to people, are applicable if a home rule charter gives a locality authority to infringe upon those rights. Listen to what it says in the committee proposal. It says, "Each of them shall retain the authority, powers, rights, privileges and immunities granted by its charter. Each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted." If its plan or charter was adopted under the 1921 Constitution, it is subject to limitation only by that constitution, not by this one. Look at Mr. Pugh's amendment. The local governmental subdivisions existing under home rule charters or plans of government at the time of the adoption of this constitution shall continue to have all of the authority, powers, rights, privileges, immunities, obligations and responsibilities as therein provided." In other words, all the rest of this constitution doesn't apply. Now you can contextualize the meaning of that, particularly if you go through the Bill of Rights, the other limitations that are going to be in Revenue and Taxation and other provisions. We are saying that these are sovereignties on the local level. We are in effect alienating the sovereignty of the State of Louisiana, making this constitution inapplicable to these local political subdivisions, and that doesn't make

we've meant to apply to local governments in particular. We've got to make this change. I don't know whether it's going to be in the Pugh amendment, whether it's going to be in the proposal, depending on how this amendment comes out. But we've got to make that change. These local governmental charters have got to be subject to this constitution, not to the constitution under which it was adopted.

Questions

Mr. Lanier Mr. Jenkins, am I correct in that Article 1, Section 1 of the Bill of Rights provides that "all of the rights guaranteed therein shall be preserved inalienable by the state and guaranteed inviolate by the state?"

Mr. Jenkins Yes, you are, but any provision of this constitution has to be read in connection with all the other provisions, and if you are in one point, saying that a local government has all the authority that it ever had under its charter under a previous constitution, you're in effect negating that. You're making an exception to that.

Mr. Conino Delegate Jenkins, you just mentioned that the...if these articles were adopted, that the local and parochial districts would have power supreme. Are you familiar with Section 30 of the committee's proposal?

Mr. Jenkins Yes, I am.

Mr. Conino Supremacy of the constitution?

Mr. Jenkins No, that doesn't protect us except in the future. It says, "The provisions of this constitution shall be paramount, and neither the legislature nor the local government shall enact any laws or ordinances in conflict herewith. Now, consider what that means. It says, "the provisions of this constitution shall be paramount. One of the provisions of this constitution would be that local government charters are superior to any other part of this constitution. That's one part of it, and it's going to be paramount. And it says, "nor shall any political subdivision enact laws or ordinances in conflict herewith." Certainly in the future it couldn't enact ordinances or resolutions outside the scope of its authority, but as long as it was operating under a previous charter, it could do anything that it wanted to because that's authorized under this provision. So, authority doesn't protect you. We need some language saying "except as provided in this constitution" or "subject to the provision of this constitution", no local governmental authority shall have any other."

Mr. Burson Mr. Jenkins, I understand that a lot of people that haven't read Section 7 believe that it says what you say it does, but if you look at the third sentence, doesn't it say that each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted?

Mr. Jenkins That's right.

Mr. Burson It doesn't say anything about any privileges or rights in contravention to the constitution, but simply says that they have to perform the duties that they had to perform under the old constitution.

Mr. Jenkins That's correct, under the old constitution. It doesn't say anything about rights in contravention to the constitution. It says, "each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted."

Further Discussion

Mr. Jenkins I don't know what you mean by that.

of the convention, the argument made by Mr. Jenkins...
...the provisions of the constitution shall be paramount, and neither the legislature nor any political subdivision shall enact any laws or ordinances in conflict therewith.

Government Article provides that the provisions of the constitution shall be paramount, and neither the legislature nor any political subdivision shall enact any laws or ordinances in conflict therewith. If there is any question whatsoever with respect to the supremacy of the constitution over any local government article, I'll be the first one who will coauthor a provision when we get to Section 30 to make it clear. So, please, let's don't be misled by any such statement.

Questions

Mr. Perez Mr. Jenkins, I happen to disagree with your statement that what Mr. Jenkins says is absurd. If we really are sincere about making sure that what we do here today is not subordinated to what was done in the 1921 Constitution, why don't you agree to coauthor an amendment to Section 7 that would have provided that the provisions with respect to the rights granted in those charters, those charters will be subject to the provisions of the 1973 Constitution.

Mr. Perez Mr...I would say to you again that Section 30 is the place where we took the matter up. I wanted to be sure that there could be no misconstruction. If you have any quarrel with those particular words, I would say when we get to Section 30 we should straighten the matter out. At that time, and it was the intention of the committee when this was adopted to make it clear that the provisions of the constitution were paramount, meaning first and foremost over everything else. There is no intention on the part of the committee to make anything else paramount but the constitution.

Mr. Roy But one of the provisions of this constitution is in line 8 which says, of Section 7, "each of them shall retain the authority...granted by its charter," isn't that correct?

Mr. Perez But what you must understand, sir, is that those are the provisions for the detailed operations of government on a local basis and have nothing to do with, nor do I know of any provisions in any charter which have anything to do with the Bill of Rights, or which would conflict with the Bill of Rights.

Mr. Roy I'm not talking about the Bill of Rights. I'm talking about that that is a provision of this 1973 Constitution, is it not?

Mr. Perez I misunderstood you...I didn't get your question.

Mr. Roy I'm not going to get involved in a Bill of Rights. I say that line 8 is a provision in the 1973 Constitution, is it not?

Mr. Perez Well, I don't know what you mean by that. I'll try to answer your question. I'll try to answer your question. I'll try to answer your question.

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thority" and so on that it has under its present charter, lead necessarily to the implication that one wanted to diminish the powers of local government as they presently exist in East Baton Rouge, Jefferson, Plaquemine Parish and the cities of New Orleans and Shreveport?

Mr. Perez I would suspect that the real objection is that they are trying to take away from the people who have adopted charter forms of government some of the authority that those people wanted their local government to have.

Mr. Roy Mr. Perez, I have one more question. Suppose the City Charter of New Orleans, the present charter, says that to be a member of the city council, you've got to be twenty-one years of age, and this constitution later in our General Governmental Article, we in 1973, say that any person who's eighteen years of age and an elector may be and seek the position on any deliberative body? Which would prevail?

Mr. Perez "There is no question but that the constitution will prevail." That's the Handbook on Constitutional Law, and we have attempted to state it to be sure there's no problem with respect to it in Section 30, and again I say if you have some problems with respect to that, let's straighten them out when we get to Section 30. Let's take up this problem in an orderly manner.

Mr. Goldman Mr. Perez, I get back to my transitional article again. Wouldn't this whole thing be taken care of if it was put into the transitional article under a schedule and the legislature could then take care of it properly, and it would be out of the constitution without the names in there.

Mr. Perez Which whole thing, Mr. Goldman?

Mr. Goldman This whole Section 7. I don't mean the amendment; I mean the original Section 7.

Mr. Perez I'm not sure what this transitional business is all about. I'm a member of that particular committee which is considering the so-called transitional measures, but the whole purpose and the whole reason that you have provisions in your constitution with respect to home rule charters goes back to the many years of history that we had, where an unfriendly legislature and an unfriendly governor were taking it out, so to speak, on particular localities, and it was only after many, many years that this problem was taken care of in a constitutional provision.

[AMENDMENT NO. 1, TO THE CONSTITUTION]

Closing

Mr. Pugh Mr. Chairman, fellow delegates, as much as I know how, I drew upon what little knowledge I have to provide for an amendment that would track as nearly as possible the committee's proposal that would do the three things I mentioned to you. Merely say, "if you've got a charter, you've still got it." Now to say that you ratify the charter, or to say that they have all the authority, powers, rights, privileges, immunities, obligations, and responsibilities; and anybody that tries to draw a distinction between those two is kidding himself and kidding you. There ain't no difference between saying "I ratify a charter," or "I ratify all the things that are in the charter." Now, on the second provision, there are areas someday that may want a home rule charter. All this does is says that the legislature shall provide the means of it. This is Constitutional Convention in all of its wisdom could not, if it stayed here for years, lay down every conceivable acceptable provision relating to a home rule charter. There's no way. The third section merely says, and I agree with you that this is a departure from the committee. The third section merely says that the legislature cannot tell an individual city what form of govern-

ment they are going to have. Now, you tell me what's wrong with that. Do you want the legislature telling you you've got to have a different form of government than what you have? They can emulate it if they want to, but I'm going to tell you something—as far as this amendment is concerned, it does three things. It gives you what you've got. It gives you a right to have what you may want; and it tells the legislature to leave you alone. Now, we can do this if you want to. We can put a provision in this constitution that says, "There ain't no charter anywhere," but when you do, you are violating rights of those cities because they've got one. Don't tell me that Orleans suddenly awakes tomorrow and finds out they don't have a viable charter, don't tell me Shreveport, Jefferson, whoever else has one wakes up tomorrow and says that we don't have a viable charter. Now either rewrite every word that's in their charter in this constitution or do what I'm asking you to do, is merely say, they can keep what they've got, because under the law they are going to anyway and to say there is a difference between "we ratify" or "we recognize they have these things," again I say, is a distinction without a difference.

Questions

Mr. O'Neill Mr. Pugh, the first two sections of your amendment are basically the same as the committee report, Section 7.

Mr. Pugh Absolutely correct.

Mr. Perez To make it perfectly clear again, Mr. Pugh, so the delegates would understand, before a charter could be adopted, amended, or modified, it would require a majority of all of the electorate or a majority of the registered voters in the parish, not a majority of those voting in the election, is that correct?

Mr. Pugh Mr. Brown could not have expressed that more distinctly than what he did.

Mr. Perez Well, for the answer is, I assume yes, that it would require in order to either adopt or amend a majority of all...

Mr. Pugh Absolutely. I told Mr. Brown that I had no quarrel with that, if he can give me the percentages, I'll be happy to support it.

[AMENDMENT NO. 1, TO THE CONSTITUTION]
AMENDMENT NO. 1, TO THE CONSTITUTION

Amendment

Mr. Poynter We'll go with the [campaign amendments] at this time.

Amendment No. 1--and there have been several drafts of this passed out. I believe you have the final one on your desk. If not, the one you have only has a slight change in it.

Amendment No. 1, on page 3, line 4, immediately after the word and number "Section 7" delete the remainder of the line and delete lines 5 through 21, both inclusive in their entirety, and insert in lieu thereof the following: "Every plan of government or home rule charter in existence or authorized at the time" (now the words, if you have an earlier draft, the change is that the words "or authorized" have been inserted "in existence or authorized," you may have the final draft) "at the time of the adoption of this constitution shall remain in effect but shall be subject to amendment, modification, repeal as provided therein".

Chairman Henry in the Chair

Explanation

Mr. Champagne This in essence is the original amendment that I proposed on yesterday before it was suggested that I add other material. I want to apologize to you for taking so much of your time in so doing. This amendment takes care Mr. Lanier's

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the committed proposal, and in my opinion says exactly what I want to say. I want to say it to you, and I ask for your passage of this amendment as proposed.

Questions

Mr. Lanier Mr. Champagne, when you put in the words "or authorized" so that the record may be abundantly clear on that point, I am assuming that you intend to include the city of Thibodaux type of a situation where we have adopted or authorized a home rule charter which, however, will not become effective until the end of 1974.

Mr. Champagne That is abundantly clear, Mr. Lanier and in addition to that, I had it reprinted twice, and I had the bill charged against your account.

Mr. Lanier Now, one other question about your amendment. If we have other provisions in the local government charter that later on would be in conflict with presently existing provisions in these home rule charters, do you have any language in your amendment that would rectify this difference such as the language in the Toomy amendment that says, "each of them shall also enjoy such additional powers and functions as are granted to local governmental subdivisions by provisions of this constitution, unless the exercise of such powers and performance of such functions is prohibited by its charter."?

Mr. Champagne That was proposed to me, Mr. Lanier and rather than fall into the same pitfall I fell in yesterday, I suggested that it be offered as an amendment to this amendment.

Mr. Lanier Thank you.

Mr. Champagne I urge your vote on this, and for once, let's put greens up there instead of reds. Thank you.

Further Discussion

Mr. Champagne fellow delegates, I hesitate to rise again in opposition to Mr. Champagne's amendment, but I attempted to point out yesterday, and you have before you today that the particular governments that we are talking about in this section--Jefferson, East Baton Rouge, New Orleans, Shreveport and the others--have particular constitutional provisions under which they have been created, and they have certain substantive rights which have been interpreted in the case of Jefferson and East Baton Rouge to stem from those constitutional amendments. If you'll look at the little sheet I gave you, you'll see that in the case of East Baton Rouge and Jefferson that they have a right to create a charter subject to the constitution and general laws of this state with respect to powers and functions of government as distinguished from structure and organization. The courts have interpreted the meaning of that language to say that in East Baton Rouge parish and Jefferson that they have a right to deal with pay of their employees and other matters of that kind which are part of structure and organization as against some legislative act dealing with the same purpose. Now, the problem with Mr. Champagne's amendment is that it cuts loose these charter plans of government from any kind of a base. They simply lose the foundation upon which they were built and it then raises the question as to just what remains with respect to those particular charters or home rule charters or plans of government, other than the fact that what they have now remains in effect and can be amended. It simply leaves open

to structure and organization as distinguished

that which Mr. Pugh argued so eloquently about a moment ago, and that is to take away from East

baton Rouge and Jefferson and the other municipalities concerned some contractual right, I think, that they have to exist under their particular plans of government which were authorized heretofore. I say to you that Mr. Champagne's amendment has the effect of doing that, and under the circumstances, I could not support it even though I know that Mr. Champagne is well intentioned in offering it for your consideration. It has a substantive effect upon the local governments to which I have referred. It takes them loose from the base on which they are founded, and I think we do a distinct disservice to those governmental areas if we were to adopt this particular section.

Mr. Jenkins Mr. Kean, without this amendment proposed by Mr. Champagne, wouldn't we really put the charters of local governing authorities above and superior to this constitution?

Mr. Champagne Well, wouldn't we have to look at every charter?

Mr. Kean If you look at the Section 14.3(A) relating to East Baton Rouge parish, you will find it very plainly spelled out.

Mr. Jenkins Well, East Baton Rouge is just one of the parishes, Mr. Kean. We'd have to really inspect the charters of each local governing authority and see if in any respect they went beyond this constitution and then make that judgment, wouldn't?

Mr. Kean Mr. Jenkins, I've been trying to explain for two days now that a charter or a plan of government has nothing to do with substantive rights of government. They deal with the form of government. There's nothing in the East Baton Rouge Charter that talks about rights or privileges or immunities, or anything else. They simply provide for the form of the government, and I think your fears are unfounded with respect to this phase of the matter.

Mr. Jenkins Well, Mr. Champagne's amendment though keeps these charters in effect, doesn't it? Isn't that exactly what it says?

Mr. Kean It keeps them in effect, Mr. Jenkins, but it cuts them loose from the base upon which they were founded.

Mr. Kean I take the position that they would be subject to this constitution in any event.

Mr. Duval Mr. Kean, do you feel that under the Champagne amendment, by a legislative act, perhaps the structure of a home rule charter could be changed, is that what you're saying?

Mr. Kean Yes, sir.

Mr. Duval Yes, sir.

Mr. Champagne Mr. Kean, in reality the only way a home rule charter is in the constitution. Well, what

Mr. Kean No, my point, Mr. Champagne, is that

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particular home rule plans...

Mr. Henry The gentleman has exceeded his time.

Further Discussion

Mr. Arnette I speak in favor of this particular amendment for several reasons. First of all, I will find two major faults in the committee's proposal. The first being in the sentence that begins on line 8 which states that "each of them shall retain the authority, powers, rights, privileges and immunities granted by its charter." Whether it's against this new constitution or not, they will have the rights they presently have, and I don't think one municipality or two or six or ten or fifteen ought to have powers that some other municipality or parish or any other political subdivision cannot have. We have several provisions in this constitution, in the Bill of Rights for example, concerning property rights and things of this sort that would be maybe against the home rule charter and therefore, would render it... that portion of it, unconstitutional. But under that provision those particular municipalities would be under the old constitution, not under the new constitution. I think all political subdivisions, all municipalities ought to be under the same constitution. It is the only right, fair way to do it. The next objection I have to the committee proposal is the next sentence. It says "each of them shall also enjoy such additional powers and functions as are granted local governmental subdivisions by provisions of this constitution..." No, excuse me, the next sentence in line 10. I says, "each shall be subject to the duties imposed by the applicable constitutional provisions under which its plan or charter was adopted", which means that they would be subject to the 1921 Constitution as to their duties and functions. This would adopt by reference about twenty pages of the old constitution into the new constitution. So if they would want to have any amendment, they would have to throw it as set out in the old constitution, they would need a constitutional amendment to this particular sentence of this new constitution. My people, and I'm sure the people of many areas of the state, are tired of voting on local issues that affect only New Orleans or only Baton Rouge or only some other area of the state. They don't want to vote on home town or my home district. I don't think we ought to go into this business of adopting wholesale provisions of the old constitution so that if we want to change them, we must amend the new constitution. This is a bad practice. Now, let's read what Mr. Champagne's amendment says. It says that every plan of government, every plan of government or home rule, home rule charter in existence or authorized at the time of the adoption of this constitution shall remain in effect. Now, what could be more clear than that? If you have a home rule charter, or if one is authorized, it shall remain in effect. This doesn't put any home rule charter, this doesn't throw it out of the window or do anything of this sort. It remains in effect. Now, Mr. Kean said that this would be subject to a legislative act change. Well, that is just simply not true under Mr. Champagne's amendment because it goes on to say, "but shall be subject to amendment, modification, or appeal as provided therein." So if that charter does not provide for any amendment by the legislature or any change by the legislature, then it cannot be changed by the legislature. It's very simple; it's very, very clear in its language. I don't see how the legislature could get a power under its charter that is not there to begin with. So if the legislature cannot change that charter at the present time, the legislature cannot change that charter in the future. It's very simple; it is there in black and white in Mr. Champagne's amendment. I think it's a good amendment. Whoever has a home rule charter, it shall remain in effect, only subject to the provisions of this constitution. I don't think we ought to have some home rule charters subject to an old constitution, and some subject to a new one, and Mr. Champagne's amendment

solves this problem. I think it does it very, very well. It does not allow the legislature to come in wholesale and change anyone's charter unless they have that right already, which means there is no change whatsoever in the charters in that respect, and I don't see how anyone could get it out of that particular language.

Questions

Mr. Jenkins If the State of Louisiana has a statute on the books which is constitutional under the 1921 Constitution, but this constitution is passed and it's contrary to this one, that law would be nullified, wouldn't it?

Mr. Arnette I assume that would be correct. It would be unconstitutional.

Mr. Jenkins So really what the committee proposal does, it puts home rule charters really above the general law of this state because whereas a general statute would be unconstitutional, a charter could not be, isn't that correct?

Mr. Arnette That's exactly right, if you adopt the committee's language or some of the other language that has been proposed in other amendments. Section 30, notwithstanding, when it says that "this language shall be supreme to any local or state law," it is very obvious that when you have a provision in this constitution saying "this constitution shall not apply to home rule charters," it shall not apply to home rule charters.

Further Discussion

Mr. Roy Mr. Chairman and ladies and gentlemen of the convention, I rise in support of this amendment. I've never heard so much legal mumbo-jumbo about what Section 7 is trying to do other than... and I want you to pay attention... that if you believe in the supremacy, if you want everything to be of a local government established under some home rule charter that none of us know about because I don't know what's in the home rule of New Orleans; I don't know what's in Shreveport; I don't know what's in anybody's... Jefferson, Plaquemines Parish, whatever have you... then vote against this amendment because they have now the output in Section 7. Mr. Champagne's amendment is very very simple. Greg Arnette did a great job of explaining it. Well, let me show you what else the committee wants with respect to those particular home rule charters in line 12. It not only wants to come into 1974 with everything that it's had in the past and what they may not touch by this constitution, but it wants to give or to arrogate unto itself anything that we may give to local governments under Sections 8 and 9 of this particular article. It's the old proposition of having your cake and eating it, too. They don't want you to not only not touch them with respect to what they've had in the past and what they have now, they want everything that we may decide to give local governments in the future. Now, Mr. Champagne's article says very plainly that after the adoption of this constitution that the home rule charter shall remain in effect. I don't know how more clearly you can say that they're going to come into the new world or into the new constitutional era just as they presently are. I don't see all this Section 7 malarkey about "we want to retain the authority, powers, rights, privileges and immunities granted by this charter." Now, when we were up here discussing the Bill of Rights everybody said, "What do you mean by this other rights?" I ask you, "What do you mean by the privileges and the immunities that these people want to come into 1974?" Now, if they want to define those, let them try to do it. I don't think there's anything wrong with Mr. Champagne's amendment. I believe this body should decide that any local governments coming into existence in 1974 will abide by what we decide they should have and not by what is enshrined or hidden in some charter of which we know nothing. Thank you.

Mr. Lanier: Mr. Roy, and I think if these people named in the constitution that they would be...

Mr. Roy: I think you'll tried to do in Section 7.

Mr. Lanier: Well, let me ask you, most of these folks are in the constitution right now. Do you think that they are supreme in Louisiana right now?

Mr. Roy: No, because we can now deal with them through constitutional amendments, but Greg Arnette's point is well taken by your question, because we've got to go and amend the 1921 Constitution in some way in 1976 or 1977.

Mr. Lanier: Let me ask you this, Mr. Roy. In Section 9 it provides for powers of other local governmental subdivisions, and it has the residual grant of authority which I believe you said today to me that you supported. Is that correct?

Mr. Roy: Yes. I support a residual grant provided that the legislature may always restrict it.

Mr. Lanier: Now, if Section 9 provides for these powers, the residual power, for other units then that power would not go to those who would be ratified in Section 7; wouldn't that be correct?

Mr. Roy: I agree with you, Mr. Lanier.

Mr. Lanier: O.K. If Section 9 sets up the residual grant of authority for other units, i.e., other than 7 and 8, which are those who are presently in the constitution and those who are coming in under the home rule charter in 8, that means the only people that would have the residual power would be the people who are not home rule under 8 and who do not have the present constitutional charter. Is that correct?

Mr. Roy: You mean not home rule under 7.

Mr. Lanier: Well, let me run it by you another way. 7 ratifies existing constitutional charters, right?

Mr. Roy: Yes, but I don't think it means that and doesn't deal with the question of those that are incorporated otherwise.

Mr. Lanier: 8 provides for future home rule charters, right?

Mr. Roy: That's right.

Mr. Lanier: 9 provides for the power for other units of government, right?

Mr. Roy: Right.

Mr. Lanier: So, that means those under 7 and 8 would not have the power granted in 9. Is that correct?

Mr. Roy: That's right, but don't forget you're not giving those presently organized under commission plans of government that are not home rule...you're not giving them the rights you're trying to give them under Section 7 either, Mr. Lanier. You're not pointing that out.

Mr. Lanier: But, what really you're getting to right now the ones under the existing 7 are organized under the existing 7, right?

Mr. Roy: Yes, but the question is whether all local governments are the same...

Mr. Jackson: Ladies and gentlemen of the convention, Mr. Chairman, I would like to rise up in support of Mr. Champagne's amendment. As you recall, yesterday, I got up here and I talked to you about my support of Mr. Champagne's amendment at least my reservation about his original amendment. Let me try to enlighten you about some parts of this amendment. The committee proposal enumerates the various home rule charters. It has already been stated to you that the reason for the enumeration was, one because the constitution specifically enumerated, and second, there was a constitutional provision allowing for a particular... I think Plaquemines Parish and Thibodaux, as Walter mentioned, was his concern to be enumerated. I want to suggest...even if you look at the committee proposal...what we have done...it's gone past the 1921 Constitution because we have enumerated, we have added Plaquemines Parish, and I've asked Mr. Lanier why if we're talking about the concern for the city we haven't enumerated Thibodaux which he has already admitted is a home rule charter. I suggest to you that Mr. Champagne's amendment does no violence to the committee proposal. I would like, also, to suggest to you that for those in urban areas...and I'm from the city of New Orleans...and I'm concerned about our city. I'm concerned about our charter. I want to suggest to you that it does no violence and is just really a matter of people just throwing up a smoke screen or the "boogeyman" say that "Look, Jefferson"...which is the highly urban area and Orleans and Shreveport and Plaquemine...that, you know, this is going to do violence to you"...which is a matter of getting some additional votes. I would suggest that we could adopt Mr. Champagne's amendment and for other concerns that we have I would suggest to Mr. Lanier that we still haven't...under the committee proposal...considered the city of Thibodaux. There's no mention whatsoever about Thibodaux. I think he voiced his concern in the committee, but I think as a matter of the votes or something, he didn't get it in. I think that...and I rise again to suggest to you...that if you looked at what happened to Mr. Champagne's amendment yesterday, with the additions of some other language, it raises some fears in other delegates' minds as to the intent of our committee. I'm suggesting that I am basically in agreement with the committee, and I have said to them very clearly that there are some areas that I do disagree and I reserve the right on the floor to say them, and I just think, based on my knowledge of being on that committee and listening to the arguments, and I think Greg Arnette answered very clearly that Mr. Champagne's amendment does no violence whatsoever to either of the home rule charters. Now, I understand why some people will probably vote against it because I think they have really been affected by the "boogeyman" that's been thrown out. I suggest to you that it is not that, and even if we, talking about enumerations, I'm going to personally ask, Mr. Lanier, let's put in Thibodaux because I want to...we're talking about protecting these city charters...why is not Thibodaux mentioned...too...I think that is a concern that we have to take into account to.

Further Discussion

Mr. Roy: 9. Envisioned and follow the committee's amendment. It does as I poorly tried to do. It gives them that has, what they got. I don't think we need to worry about the amendment after the word that appears in here, however, from what I've seen...I think that is a concern that we have to take into account to.

Mr. Lanier: I think that is a concern that we have to take into account to.

Mr. Roy:

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[Quorum Call: 113 delegates present and a quorum.]

Amendment

Mr. Poynter These are Toomy and Kean.

Amendment No. 1, on page 3, line 4 after "Section 7" delete the remainder of the line and delete lines 5 through 21 both inclusive in their entirety and insert in lieu thereof the following: "Every plan of government or home rule charter existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified or repealed as provided in its charter. Each local governmental subdivision which has adopted such a home rule charter or plan of government shall, also, retain the authority, powers, rights, privileges, duties and immunities granted by its charter and by the constitutional or statutory authority therefor."

Explanation

Mr. Kean Mr. Chairman and fellow delegates, we've had considerable discussion today surrounding among other things, the specific references in this proposed section to specific areas of local government which are affected by it. There has been other objection raised by Mr. Pugh, for example, who felt that the section as worded would have the effect of giving to Shreveport, for example, authority which it does not now have under constitutional authorization by which the charter in Shreveport was adopted. Under those circumstances we have suggested this amendment to the committee proposal which would make it clear that every plan of government or home rule charter adopted or existing when this constitution is adopted would remain in effect and could be amended, modified or repealed as provided in that charter. Secondly, we have provided that those local governmental subdivisions would retain such rights and privileges as are contained in its charter and as are granted to it by the constitutional or statutory authority under which it was enacted. Now, that would simply mean in the case of Jefferson and East Baton Rouge Parish, for example, that the distinction made in those particular articles under which they...constitutional articles under which they were authorized between structure and organization and powers and functions of government would continue, and would grant the continuance of those particular charters and of New Orleans, Shreveport and the others involved under the constitutional or statutory authority by which they were created. We have included the statutory authority, because as I have pointed out earlier, there are some municipalities which are home rule charters under statute. A general statute authorizing for the creation of the charter. Therefore, we have made reference to the statutory authority in order to make it clear that they continue with that as the base for their particular charter which would be continued by this particular section. It seems to me that it represents a consensus. It does away with objections such as Mr. Champagne had against it...the original proposal. It does away with the objection, I think, that Mr. Pugh had, and under the circumstances I would urge your favorable consideration of the amendment.

Questions

Mr. Roy Mr. Kean, we've been saying all along that you'll have been trying to make us go back around with the Constitution of 1921 and now you specifically state it, don't you, with this?

Mr. Kean Mr. Roy, all I'm saying here, that in the case of Baton Rouge, for example, it has certain specific authority under Article XIV, Section 3A by which its plan of government was adopted and if you don't give some reference to that you take away the base of that charter, that's all.

Mr. Roy Well, I don't know if I can get a specific answer from you, but aren't we going to have to go back to the 1921 Constitution to determine this

constitutional authority that you want us to interpret for Baton Rouge and every other home rule charter that is presently in existence?

Mr. Kean You've got to go to that as a point of reference, that's correct.

Mr. Roy I think this one is worse.

Mr. Roemer Mr. Kean, I notice that your amendment does not have the phrase that another amendment that I see on my desk does and that is "subject to the provisions of this constitution." Why don't you have that in your amendment?

Mr. Kean Because, I think it is subject to the provisions of this constitution.

Mr. Roemer But, you don't clearly state that, do you? That's just your supposition. It certainly doesn't read that to me.

Mr. Kean Mr. Roemer, I take the position that whatever these agencies have in the way of powers and functions is subject to the constitution.

Mr. Roemer Well....O.K. Thank you.

Mr. Burson Mr. Kean, there is a legal question which was discussed at some length in our committee sessions. It has not even been reached today. Isn't there a real legal problem about abrogating the provisions of any existing charter form of government by constitutional action by this convention? Would you elaborate on that?

Mr. Kean Yes. The point is that if we don't continue the establishment of the base by which they were created, it raises a serious question as to their continued existence. Because you no longer have any point of reference by which to determine the right to exist, and under the circumstances, if you don't make some reference to the base upon which they were founded they're just kind of floating out in the air somewhere, and under the circumstances I think we'd do a distinct disservice to those existing charters in that kind of context.

Mr. Pugh Mr. Kean, I can see that you are a legal scholar in this field and I pose one question to you that concerns me. Do you think if this convention wanted to do so that it could, in fact, abolish all of the home rule charters in the state of Louisiana?

Mr. Kean In my opinion, Mr. Pugh, they could.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, if we adopt this amendment we might as well go home. It's just that simple. I'll tell you why. Because, we are saying that we're writing a partially new constitution. We're writing a constitution that is illusory. We're writing a constitution that will apply to the judiciary. It will apply to the legislative. It will apply to the executive, but it won't apply to local government at all. Nothing that we put in the bill of rights, nothing that we may put in the articles that are to come up in the future on revenue, finance and taxation, nothing that we put anywhere in this constitution will change local government or be applicable to local government one wit, because if you change the plain language of this amendment, local government subdivisions which have a home rule charter stay in the status quo. They have the same authority; they have the same powers; they have the same rights; they have the same privileges; they have the same duties and the same immunities granted by its charter as interpreted and construed in the light of the Constitution of 1921. This constitution does not apply to it period. Now that's what it says in plain English. Now, if that's what you want to do, vote for this amendment. If you want to write a piece of a constitution, a partial constitution, a half of a constitution, go ahead and vote for this

amendment, but I'm telling you when you do, you might as well just pack up and go home, because you're not doing a thing. None of the provisions protecting the rights of the individual citizens that we have in this state and giving them more rights with respect to government which we incorporated in the bill of rights after weeks and weeks of debate, got a thing to do with local government. Why? The plain language of this section. All you have got to do is read it. You don't have to be a lawyer; you don't have to be a judge; you don't have to be a college graduate; all you have to do is to be able to read the English language. I strenuously urge you to reject this amendment, because if you don't reject it, as I said before, you just might as well just close up shop, not tomorrow but today, right now, and go on home, because you haven't done a thing but wasted your time and the people's money.

Questions

Mr. Arnette: Are you an attorney? The not. In regards to what you just stated, if we adopt this amendment, I suppose and the entire document goes to the people next year and if it's approved by the people are we going to just have one constitution or are we going to have two constitutions or one and half?

Mr. Avant: We're going to have two constitutions. Mr. Munson. We're going to have one for state government which will be the Constitution of 1973. We're going to have another one for local government which is going to be the Constitution of 1921, and you're going to have the people somewhere in between and they're not going to know where they stand.

Mr. O'Neill: Mr. Avant, Mr. Kean has said that the 1921 Constitution will be the legal basis for the home rule charters, is that correct?

Mr. Avant: The charter or the constitution or the laws that were existing at any time during the life of that charter, in fact, everything but the constitution.

Mr. O'Neill: Well, let me ask you, Mr. Avant, if this constitution is adopted, in your opinion, what is the legality of the old constitution?

Mr. Avant: Well, we're still going to have it. You're going to have to have the old constitutions.

I yield, when you're recognized.

Mr. Chehardy: Mr. Avant, as I read this proposal, it seems to say in effect that if before we pass this constitution and if a charter should provide by that time for the people of that particular community to ratify separately or to abide by, with or against the present constitution, it would in effect...this would prevail. In other words, we're taking all of these communities away from our constitution if their charter so provides.

Mr. Avant: That's correct.

Further Discussion

Mr. Guertso: Mr. Chairman, members of the convention, first of all I want to say I'm certainly for home rule and I think just about every delegate here is for home rule. That's not the question. When you leave out the words, "subject to the provisions of the Constitution," and you add this amendment, then if you believe that one subdivision should exist to any governmental subdivision that's above and beyond the 1974 Constitution then I agree. I agree. But if we adopt the new constitution, I don't see how any delegate can sit down and say that the Constitution is above and beyond the provisions of the new constitution, and whence did they get those powers from? Those powers from the 1921 Constitution. That's the only way to keep the powers from the 1921 Constitution.

Then, the exceptions you are making are for a pre-emption of the powers of the new Orleans delegation, Orleans Parish; I said "They have a home rule charter." I said, "What powers are you afraid to lose if you just retain what you have subject to the 1974 Constitution if adopted?" He says, "I don't know." So, I don't see the problem. Now you people who don't have a home rule charter in your district, you go back home and you say, "Well, we adopted home rule. Let's adopt a home rule charter in our parish." And they say, "Hey, I want some of the powers they've got in Plaquemines Parish." You say, "Oh no, I'm sorry. They got those before the new constitution. The door was locked." "Well, they kept theirs and I can't get mine." Now, if you believe that, you vote for this amendment. I have an amendment coming up that I think retains what they have, subject to the new constitution, and let them amend it, again subject to this constitution. Nobody...no plan of government...no political subdivision should be above the 1974 Constitution. I don't see how anybody can support that. I don't want to live in a benevolent despotism. I want to live under a constitutional democracy. I urge you to defeat this amendment.

Vice Chairman Alexander in the Chair

Further Discussion

Mr. Arnette: I want to state very simply that this amendment is exactly the same thing as the committee proposal, only it's poorly drafted. But, it's exactly the same thing. It proposes absolutely no change whatsoever from what the committee proposed. There is an amendment coming later by Mr. Conroy, Denney, Stovall and Gravel which, I think, we can all agree to. It keeps the home rule charter in existence. It does not change them. It merely subjects them to this constitution which is only right, because every person, every political subdivision, every municipality, everyone in this state should be subject to the new constitution. I don't think we ought to make an exception for one person, one town, or one parish. Let's submit everything to the constitution equally. I think this was our goal in coming here. We wanted a new constitution for all the people. Let's have a new constitution for all the people and let's adopt the new amendment coming up and reject this present amendment. Thank you very much.

Questions

Mr. Roy: Mr. Arnette, I think that this amendment is a little more specific in that it leaves no doubt that we have to deal with the 1921 Constitution. Isn't that true?

Mr. Arnette: Well, according to the way I read it, yes, it does say, "subject to that constitutional provision when it was adopted," and that is the 1921 Constitution.

Mr. Roy: And when it says statutory authority, we may be having to deal with a statute that's set-up a local government that was in 1920 and we'd have to go back and see what that statute did, too; wouldn't we?

Mr. Arnette: I'm sure that's correct. I really don't know about that, Mr. Roy.

Mr. Roy: I don't have any other questions at this time.

Mr. Arnette: Thank you, Mr. Roy. I'll have to deal with that question later on.

Mr. Arnette: Well, I'm sure that I'll advise you to read it again.

Mr. Arnette: Well, Mr. Gauthier, what it says there is that the new constitution is subject to the 1921 Constitution.

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which says something else shall be superior then this constitution's statement that that other thing shall be superior, is superior, which means that the other is superior. If you can get my reasoning.

[Previous Question ordered.]

Closing

Mr. Kean Mr. Chairman, fellow delegates, I have attempted to lay before you the problem that this particular section attempts to deal with, and if I understand the arguments of Mr. Arnette and Mr. Avant, they would want to take away from East Baton Rouge Parish, Jefferson, the other home rule charters and municipalities, certain rights which they have achieved up to this point by a vote of the people and by the vote of the local people. I didn't come here to take away things from local areas which had achieved them through the normal processes of governmental change. The purpose of this amendment is to provide that those specifically listed municipalities which now have home rule spelling them out would continue to have those rights which they now have and under which they have organized their own plans of government, and unless you provide for that in an amendment such as this, I repeat and I repeat again, that you take away from those particular governments the base upon which they are founded. Now, this business about creating something that's some kind of super government is in my opinion totally without merit. We've talked about the supremacy provisions of Section 30 and it's clear to me that the provisions of this constitution with respect to the rights, the bill of rights, or whatever may be the particular authority in question, would always be paramount. We're talking about here, governmental structure, and under the circumstances I can't follow the logic or the reasoning behind the suggestion that this would in some way give these particular municipalities and parishes and organizations that primes anything this constitution provides. I say to you that this section, this provision, is necessary for one purpose only, and that is to provide for the orderly continuation of the political subdivisions to which it refers and without taking away from them substantive rights that they now enjoy under existing constitutional or statutory provisions. I ask your favorable consideration of the amendment.

[Amendment ruled. Record vote ordered.
Amendment rejected: 11-55. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Conroy].
On page 3, after the words "Section 7" delete the remainder of the line and delete lines 5 through 21, both inclusive, in their entirety...

All right, let's try this again.

Amendment No. 1. On page 3, you'll need to insert line 4 after the word "...and numeral and punctuation "Section 7." delete the remainder of the line and delete lines 5 through 21, both inclusive, in their entirety and insert in lieu thereof the following:

"Every plan of government or home rule charter existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein."

Need to change the following words--the next sentence begins, as you have it, "Subject to the". It should read: "Except as inconsistent with the provisions of this constitution, each local governmental subdivision which has adopted such a home rule charter or plan of government shall retain the powers, functions and duties in effect when this constitution is adopted. Each of them, if its charter permits, shall also enjoy the right to any powers and functions granted to other local governmental subdivisions."

Explanation

Mr. Conroy We have tried to meet the objections that have been raised on the floor. We have modified language here and there for that purpose and objective. I think that this entire question has been thoroughly debated and discussed by this point. As I said, this is intended to meet the objections. I hope it does. I think the best thing to do is to yield to questions that may be asked.

Questions

Mr. Lanier Mr. Conroy, I have two lines of questioning. The first one is my standard one: that when you put in here "those that are existing or adopted when this constitution is adopted," you are intending to include the situation of the city of Thibodaux where we have adopted a charter but it is not yet in existence. Is that correct?

Mr. Conroy That is specifically why it is so worded.

Mr. Lanier Fine, thank you. Now the second question is the one I was discussing with you a minute ago, about the effect of the last sentence in your amendment. Would it be true that if we adopt the residual grant of authority approach as is presently submitted to the convention in Section 9, that a unit of local government with a home rule charter would not have the residual grant of authority unless they amended their charter to so include that authority?

Mr. Conroy As I would view it, Mr. Lanier, that would depend on what the home rule charter in question said. As this amendment says, if the charter permits it, it can have additional powers. My problem, as I mentioned to you earlier and as one of my questions to Mr. Kean indicated earlier, I think that regardless of what we put in Section 7 that we will have problems with the wording of Section 7 until we determine exactly what goes on into Section 9. I would ask Mr. Kean in that regard whether when Section 7 was passed the committee would resist the temptation to reconsider it and lay it on the table in order that any further discussions that might emanate from Sections 8 and 9 could then be considered in conjunction with Section 7 and the three sections together laid at rest at one time. That's the only way I can answer it; it doesn't matter what we say in this sentence; it's subject to the convention's will when we get to Section 9. At that point if what we have done here is not appropriate, then I think it should be considered at that point.

Mr. Lanier Well, in that regard, would you agree that in acting on the last sentence here, since we have not yet passed on Section 9, that we're kind of in the position of having the cart before the horse?

Mr. Conroy I think that Section 7 is the cart before the horse, no matter what else you do, because the other deals with governments generally. This deals with only one specific area of local government: that is, home rule charter governments.

Mr. Anzalone Mr. Conroy, there are those of us who are not greatly familiar with the charter form of government and by way of explanation, I would like to ask you a few questions. Under the present charter form of governments, as I understand it, this is constitutionally authorized. Is that correct?

Mr. Conroy You may be in a position of the blind talking to the blind or seeing the blind. If you're expecting me to be a home rule charter expert, I'm not. I could give you my impressions, but if you want sound answers to some of these, you may best address them to somebody who can really answer them.

Mr. Anzalone All right, sir. Would you do so?

Mr. Conroy I'll try.

Mr. Anzalone: Is it correct that the charter is approved by a majority of the electors who vote on the charter proposal at an election called for that purpose.

Mr. Conroy: Yes, most...but not all home rule charters are. It's my understanding that there are some that are legislatively authorized.

Mr. Anzalone: Right. Now, there are certain powers and functions and duties, and whatever have you, under these charters that the legislature by purely statutory law cannot interfere with. Is that correct?

Mr. Conroy: Again, I really don't know. You may be right, I just don't know.

Mr. Anzalone: Now, in pursuing this, is that if we provide that subject to the provisions of this constitution and somewhere down the line we slip in a little provision that says that the legislature can pass statutory law, which is going to effect the home rule charter, then, in effect, what we're doing, if we should pass something like this further on down the line, is that we are making this a statutory home rule charter rather than a constitutional one. Do you agree?

Mr. Conroy: No, I don't see that in this at all.

Mr. Anzalone: If this constitution were to grant to the legislature the authority to interfere with the home rule charter, then you don't see where that would be a statutory charter?

Mr. Conroy: Well, I think that if this constitution so provided, yes, but I don't think it's provided in this amendment is what I'm saying.

Mr. Anzalone: Well, I know that, Mr. Conroy, but the question just arose.

Mr. Conroy: This relates to the same sort of question that was asked earlier, was whether this constitution could abolish home rule charters in effect. The answer that Mr. Kean gave...

Mr. Henry: The gentleman says Mr. Conroy, you've exceeded your time.

Point of Information

Mr. Kean: Question for the Chairman, please, or for the Clerk.

Mr. Anzalone kept talking about "subject to the provisions of this constitution." As I understood it, that was changed to read "Except as inconsistent with the provisions." Is that correct?

Mr. Poynter: That's correct.

Chairman Henry in the Chair

Reading of the Section

Mr. Poynter: "Section 8. Home Rule Charter
Section 8.(A). Any local governmental subdivision may draft, adopt, or amend a charter of government to be known as a home rule charter in accordance with the provisions of this Section. The governing authority of any such local governmental subdivision may appoint a commission to prepare and propose a charter or alternative charter, or may call an election for the purpose of electing such a commission.

To elect a commission to prepare and propose a charter or alternative charter when presented with a petition signed by not less than fifteen percent of the electors, who live within the boundaries of the affected subdivision, as certified

by the registrar of voters.

approved by a majority of the electors who vote on the charter proposal at an election called for that purpose.

(D). Two or more local governmental subdivisions situated within the boundaries of one parish may avail themselves of the provisions of this Section, provided that a majority of the electors in each affected local governmental subdivision who vote in an election held for that purpose vote in favor thereof. The legislature shall provide for the method of appointment or election of a commission to prepare and propose such a charter consistent with Paragraph (A) of this Section. However, at least one member of the commission shall be elected or appointed from each affected local governmental subdivision. The legislature shall provide the method by which the electors of more than one local governmental subdivision within the boundaries of one parish may petition for an election for such purpose consistent with Paragraph (B) of this Section.

(E). A home rule charter adopted pursuant to the provisions of this Section shall provide for the structure and organization, powers, and functions for the government of the local governmental subdivision....

adopted with

Explanation

Mr. Kean: Mr. Chairman, fellow delegates, this section in keeping with the general philosophy of the committee by which powers will be granted from the constitution to local government under certain circumstances would change the present method of establishing home rule charter cities or local governmental subdivisions. Under the present circumstances, at the present time under the existing constitution, Article XIV, Section 40, of the constitution says that "The legislature shall prescribe a means by which home rule charters can be conferred." There are statutory provisions under R.S. 33:1381 in the following sections which carry out that mandate and under which certain municipalities such as Kenner, Lake Charles, Deridder, Baker have enacted home rule charters. It was the view of the committee that this authority to create home rule charters should come directly from the constitution to the people and under the circumstances, Section (A) of this particular section provides for that very thing. It would give to the governing authority the right to call an election for the purpose of conferring a charter or a plan of government for a particular local governmental subdivision. Paragraph (B) would provide the means by which on a petition of not less than fifteen percent of the electors, such an election would... such a charter commission would have to be created and an election called---be, simply being a means by which you could bring this into operation even though the particular governing authority might not desire to do so. (C) simply provides the vote that would be required to carry it out and (D) would permit a consolidation of local governmental subdivisions and subject to a petition with the necessity of legislative or constitutional action. The other sections provide for the authority of the home rule charter once enacted and the other sections simply make it clear that it would not, in any case, affect the powers and functions of other constitutional agencies within that area.

Be glad to answer any questions.

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Legislative or constitutional action.

Mr. Roemer All right, I see that. I'm speaking in regard to line 12 there that says "The legislature shall provide for the method of appointment or election of a commission to prepare and propose such a charter consistent with Paragraph (A) of this Section." Without that sentence do you think they could provide for the method of appointment or election of a commission inconsistent with Paragraph (A) of the constitution? I just don't see what that sentence...

Mr. Keam Well, I think it would be simpler if it said that "The legislature shall provide for the method of appointment or election of a commission period." I think under those circumstances they could do it differently than provided in Subsection (A), and that was the reason for the reference.

Mr. Roemer I see. They could go against the constitution in what they did?

Mr. Keam No, because you are dealing with an entirely different set-up in (D) from what you are talking about in (A); that's my point.

Mr. Roemer I fail to see it.

Mr. Bergeron Mr. Keam, I'm looking at Section (B) of this. We are talking about a petition signed by fifteen percent of the electors. Am I correct?

Mr. Keam Yes.

Mr. Bergeron That's fifteen percent of the electors of that particular parish?

Mr. Keam Of the area of the local governmental subdivisions....

Mr. Bergeron Which is to be affected?

Mr. Keam That's right.

Mr. Bergeron Just out of curiosity, is there any way...how did the committee arrive at fifteen percent--no special number, I'm sure?

Mr. Keam No, as I recall in either the...under the other provisions it contains a percentage which would...I think in 33:138 there is a percentage involved, I think about twenty-five percent. But we felt fifteen percent would be adequate for the purpose.

Mr. Bergeron Thank you.

Mr. Avant Mr. Keam, when we were discussing Section 7, you explained and I believe...and I know correctly so, that these two terms "powers and functions" as opposed to the other two words "structure and organization" which, as contained in the plan of government of the city of Baton Rouge, that under the language the courts had held that a general state law establishing minimum pay scales and longevity pay for firemen would not be applicable to the city of Baton Rouge because that was a matter of structure and organization. The pay of personnel and the working conditions of personnel related to structure and organization rather than powers and functions. You remember making that...that was the La Fleur case.

Mr. Keam That's correct.

Mr. Avant Now, I note that in Subpart (E) here, it again refers to structure and organization as opposed to powers and functions. I'm particularly interested then in Subsection (G), which says that "The powers and functions of a school board or the office of sheriff, clerk of the court, coroner, or assessor shall not be affected by any provision of a home rule charter or plan of government." I, therefore, must infer from that, that structure and organization can be affected. Is that a necessary and required inference, do you not think?

Mr. Keam Well, you could infer that, Mr. Avant, but it was certainly not the intention of the committee in drafting this language. We had intended to make it clear that these particular officers could not be affected by any such plan of government.

Mr. Avant But, as it is written, and considering the explanation that we've engaged in so far, there is a very distinct possibility that under the jurisprudence the pay of the people in the office of the sheriff, the clerk of the court, the coroner, or the assessor would fall within the realm, or the people who work for the school board, would fall within the realm of the police jury or the council under a plan of government or a home rule charter. Isn't that right?

Mr. Keam I wouldn't give it that interpretation, no. But if an amendment will help satisfy that point, we would have no objection to it.

Mr. Duval Mr. Keam, as I understand it, Subsection (E) of Section 8, starting with line 28, basically, is a La Fleur case, enunciates the rule of the La Fleur case?

Mr. Keam Starting on in (E), on line 28, page 4?

Mr. Duval Yes.

Mr. Keam Yes.

Mr. Duval Now, what effect does...let's see if we can understand what that means. Does that mean that the legislature can pass no law which in any way contradicts, affects, modifies, or changes the powers and duties set forth in a home rule charter purely adopted by the local government, the citizens of the local government?

Mr. Keam No, the legislature would retain the authority to adopt laws which deal with powers and functions of local government. But, insofar as structure and organization is concerned, which would include the manner in which you set-up the government, the people that you employ in it, things of this kind, the legislature could not.

Mr. Duval Well, if that's all it does, I agree with it. But, it says "The legislature shall not pass..."

Mr. Henry You've exceeded his time, Mr. Duval.

Further Discussion

Mr. Lanier Mr. Chairman, fellow delegates, by way of additional explanation of Section 8, Section 8 and Section 9 have to be read in conjunction with each other. Quite frankly, they are the heart of the home rule article. They set forth the manner in which home rule units may be established and what powers shall be granted to home rule units and their units of local government. Section (A) extends the present procedure by which municipalities may adopt home rule charters to parishes. The idea of the committee was that with our modern society where we are becoming more and more urbanized in the country areas, people who are governed by police juries or who live in the unincorporated areas require the same services as do people who live in municipalities. They want their sewerage. They want their garbage. They need the roads. They need the lighting. All of these services are the same. You might have a situation where only a street divides that which belongs to the municipality and that which belongs to the police jury. But yet on both sides of the street, they've got to give the same services. We felt that in this regard, rather than have to go through the very cumbersome procedure presently available, or get a constitutional amendment, that the authority to adopt a home rule charter should be coequal between all units of local government: that is, parishes and municipalities. With reference to (B), this gives a specific right to the people to initiate the calling

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that the legislature was not allowed to force the city of Baton Rouge to pay certain salaries and what have you to firemen and policemen because under the Baton Rouge charter, pursuant to the Constitution of 1921, that dealt with structure and organization. Is that right?

Mr. Lanier This is a very good point and I'm glad you brought it up, because I would like to explain this to the delegates as well as to you. There is a very significant distinction between organization and structure and powers and functions. The provisions of 8 (E) deal with organization and structure. This identical language or a similar language presently exists in the home rule charter of the parish of Jefferson and in the East Baton Rouge city-parish charter.

Amendments

Mr. Poynter Amendment No. 1. [by Mr. Pugh]. On page 3, delete lines 22 through 32, both inclusive in their entirety and insert in lieu thereof the following:

"Section 8. Home Rule Charters; Adoption; Ratification of Existing Home Rule Charters. Section 8. Any local governmental subdivision may draft, adopt, or amend a charter for its own government to be known as a home rule charter. The legislature by general law shall provide the method by which a home rule charter may be drafted and adopted. A proposal to adopt, amend, repeal, or replace a home rule charter may be made by the governing authority of the local governmental subdivision or by petition of at least fifteen percent of the electors of the local governmental subdivision filed with the official having charge of elections in the local governmental subdivision setting forth the proposed charter or amendments. The governing authority shall provide by ordinance that the charter or the amendments so proposed shall be submitted to the electors at the next election held in the local governmental subdivision not less than sixty days after its passage, or if the petition requests it, at a special election held in the local governmental subdivision not less than sixty days after its adoption. Any charter or amendment thereto so approved shall become effective at the time and under the conditions fixed in the charter.

Amendment No. 2. On page 4, delete lines 1 through 32, both inclusive in their entirety and on page 5, delete lines 1 through 13, both inclusive in their entirety.

Mr. Pugh Mr. Chairman, fellow delegates, I first call your attention to the fact that the fourteenth line has the word "of" and it should be "or."

Mr. Poynter That word should be "or," shouldn't it, Mr. Pugh, "charter or the amendment so proposed?"

Mr. Pugh That's correct.

Mr. Poynter That's, I think, the fourteenth line, should read: "The governing authority shall provide by ordinance that the charter or the amendment so proposed shall be submitted."

Explanation

Mr. Pugh This amendment would authorize, allow and direct the legislature to provide by general law for the adoption of a home rule charter or plan of government, but such areas as may not, at the time of the adoption of this constitution, have already such charters or having had the same authorized or provided for, as Mr. Lanier has. It spells out in general terms a procedure to be followed by the legislature in connection with these specific provisions. It calls for a referendum, fifteen percent, as has previously been in some of the constitutional provisions. Once this is adopted, it would delete, or the next amendment would delete the rest of the provision. Questions?

Questions

Mr. Duval Mr. Pugh, looking over your amendment, I see it leaves out Section (E) of the committee proposal which is the codification of the La Fleur case. What I'm wondering is this. Under your amendment, could the legislature by statute change a structural provision in a home rule charter?

Mr. Pugh Not an existent charter. This is for new ones. Let me tell you something. He said there are two cases, but there are three cases. The other case happens to be the Shreveport case.

Mr. Duval Now, so you believe that...in your amendment then, if a municipality would incorporate... would have a home rule charter in the future, then the structure of that home rule charter could be changed by a legislative act. Is that right?

Mr. Pugh No, I didn't say that.

Mr. Duval Oh, I thought you did.

Mr. Pugh I said that the legislature can provide by general law what would be in a charter. I never said anything about changing...

Mr. Duval I understand that. Now, my question relates to how can structure be changed since the language in the committee proposal is left out of your amendment? Do you think under your amendment, structure can be changed by legislative act?

Mr. Pugh I think when they create the general law to provide for this, they may provide structure and organization as well as powers and functions, in my opinion.

Mr. Duval But, can it be changed by a legislative act?

Mr. Pugh No, sir.

Mr. Duval Why?

Mr. Pugh Well, I'll say this. Once a charter has been adopted on the basis of that, no. But, if someone doesn't have a charter under the basis of that and the legislature then creates or amends that law, then you'll have to comply with whatever the existing law is at the time.

Mr. Duval So, you feel once the charter is created under a specific act, then that charter cannot be changed structurally by a legislative act?

Mr. Pugh I sure do.

Mr. Duval What about powers and duties? Could it be changed by a legislative act, then?

Mr. Pugh If the legislative act, in accordance with a mandate of this constitution, spells out powers and duties, functions, anything it spells out, and you adopt a charter based upon what it spelled out and then subsequent to that they have a new legislative act, I tell you that new legislative act cannot affect that then existing charter.

Mr. Duval You don't think what the legislature giveth it can taketh away?

Mr. Pugh No, sir. When they give you something on the basis of a constitutional provision, brother, you've got it.

Mr. Nunez Mr. Pugh, in the present constitution there are several provisions that deal with local charters. There would be many more had not the people, in their wisdom, defeated them. Section (F), (E), (G), and (I), I think, deal with St. Charles, St. John, St. Bernard, and there were quite a number of them defeated. All of them dealt in form, powers, structures and duties. Now, you want to...I think what the committee has proposed, it sets up a general

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people of this state are going to be called on time and again to give the authority locally...or give the authority to adopt home rule charters through constitutional provisions.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, I rise in support of the Pugh amendment. We are concerned in this convention in presenting to the people a concise constitution which will give to us basic structure. It seems to me that in this particular section that is before us presented by the committee, that we have too much legislative material. Now, we have expressed in many ways our belief in home rule, and we will continue to do so. But in doing this, we must not at the same time express fear and distrust of the legislature. In fact, we might say that the code word to interpreting this article is a fear of the legislature. I submit to you that we cannot write a constitution on the basis of fear. We must do it instead on the basis of trust and mutual respect. It seems to me that this amendment presented to us by Mr. Pugh does just this.

I submit to you that our national constitution has prevailed because it is based on mutual respect and trust. It maintains a balance of powers, and I submit to you that the Pugh amendment is an effort in this direction. Now, we came to an important break in adopting Section 7. At that time, we realized that what we are concerned about is not the text of this proposal as such, but rather it is whether or not we're going to give to the people a meaningful constitution. Now, I submit to you that this section with which we are dealing should not be considered as being sacred, but instead we should try to take the substance of it and express it in fewer words, and this is what the Pugh amendment does. Oftentimes a person needs radical surgery. That is, a malignancy needs to be removed in order that the body may remain strong. Now, as we move through this section and through this article, we do come to a need of radical surgery and it seems to me again that the Pugh amendment does this. It reduces about two pages to possibly a half page, and I think it still maintains the basic substance and content that the committee recommended. Therefore, I encourage its support and adoption.

Further Discussion

Mr. Alexander Mr. Chairman and delegates, I have been analyzing this section, Section 8, and comparing the amendment. I have listened to some of the speakers and I'm afraid there have been one or two misrepresentations. The first of one speaker said that the legislature could, under the provisions of this amendment eliminate or change or alter in any way they see fit the methods by which a local political subdivision possibly could set up a home rule charter. Now, as the amendment stipulates, and here in about line 5, "the legislature by general law shall provide the method by which..." Now, what I am saying that I think what the resolution states is that the legislature is obliged--that is, it must provide. It hasn't the leeway, there is no elasticity here for the legislature to come in and say "We are not going to provide" or for the legislature to take away a local home rule as has been done in the past. Now, in addition to that argument I would say that one of the major reasons why this convention was called was to write a more concise document. The document under which we are operating now is unwildly long and everyone to whom I have spoken almost to a man wants a short, concise, understandable constitution. When you give him two full pages in this section alone, I think it must contain material that should be statutory and could easily be left to the legislature and, yet, I think there are definite safeguards which would prevent any future legislature from encroaching on the prerogatives of local government. I'll yield to questions.

Questions

Mr. Nunez Reverend Alexander, do you realize that in the present constitution there are over...there are approximately ten pages that deal with this very same particular subject--that is, allowing local governing authorities to establish home rule charters--and that this new amendment cuts it down to two pages, and it is a general provision that gives constitutional authority to the local governing authorities to establish a home rule charter? In fact, it cuts it down by one-fifth of the present wordage in the constitution.

Mr. Alexander If you are speaking about Article XIV, I think it's about ten and a half pages, and that accounts for my opposition. I think that the home...that this section could...simply stipulate that the legislature shall provide the methods by which a local governing body could set up a home rule charter. That would be it; that's all that's necessary.

Mr. Lanier Reverend Alexander, would you agree that under this language that says "The legislature by general law shall provide the method by which a home rule charter may be drafted or adopted," that the legislature could provide that part of the method of adoption would be to acquire an enabling act or permission from the legislature? Would you agree to that?

Mr. Alexander If you mean the legislature may stipulate that the local governing body must obtain information...I mean permission from the legislature, I would say that a good court would rule against that particular idea. I think a court would rule that the legislature may only provide the method and may not restrict the local governing body.

Mr. Lanier You don't think that the method could include an enabling act by the legislature?

Mr. Alexander Possibly.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, one, I think we should not by the shortness or length of a proposition determine its merit. I rise in opposition to the Pugh amendment for the following reason. I think very desperately the people of Louisiana want home rule, a viable home rule concept. I think if you would go and ask the people--whoever...we talk about the people; if you go on the street and ask them about home rule, I think ninety percent of them would want home rule. This provision, the Pugh amendment, emasculates the whole home rule provision. This is how it does it; it allows the legislature to provide for the method. It said it shall provide for the method of how it's created, but it in no way prohibits the legislature from changing what the legislature granted to the municipality or a parochial government setting home rule. Therefore, it completely obviates the home rule concept, puts it right back in the lap of the legislature. Everybody who is going to want home rule, every municipality and parish is going to try to get their legislators to put them back in our new constitution so they will be protected from constraining legislative enactments which might change what they have gotten already under the home rule. The purpose of a home rule charter is primarily stability on the local level and you have no stability at all under the Pugh amendment. It completely destroys the home rule concept. You might as well have no provision at all. In my opinion, this amendment puts it right on the line. I'll say this, in my opinion. In my opinion, either you're for the home rule concept or you're not. If you're for the home rule concept, you will vote against this amendment; if you're not for it, you'll vote for this amendment. It draws the lines right here and now. So, you think carefully which way you want to be when you vote. Thank you.

Further Discussion

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finest minds in front of me in the State of Louisiana—there's not a one of us or collectively can we provide everything in a constitution. Now, this merely says the legislature can do what it's done before—that is, provide for home rule. That's all it says. Nobody is trying to take anything away from anybody; we're trying to give it to the people who justly deserve it. I suggest that you adopt this amendment so that we can go on to the remaining provisions of this article. This amendment gives us exactly what we should have; it provides that the legislature can lay the methods out by which this is to be done, subject, however, to the provisions of this: that the people got to vote on it and all of those things. I have faith in the legislature, and I'll tell you one thing. I'll bet my life as an attorney that if the legislature passes a general act providing for home rule, and if a city follows that home rule and thus gets it a constitutionally endowed charter, then no legislature can take it away from them. I don't care what these people have said. I'm telling you as a lawyer, once the legislature has spoken and the people elect to follow the provisions of the legislature, then you can't take it away.

Questions

Mr. Roemer Mr. Pugh, there are those who have been to the same podium in which you stand now and have said that to vote for your amendment would be to emasculate home rule. Is that the case?

Mr. Pugh Well, I certainly don't think it will. I don't know of anybody that's more interested in home rule than I am. We've got it at home and I like it.

Mr. Roemer In other words, what you're saying, isn't it true, would you agree that a vote for your amendment is a vote for home rule in its constitutional form?

Mr. Pugh It gives everybody that doesn't presently have it an opportunity to have it, is what it does.

Mr. Perez Mr. Pugh, isn't it correct that the... where your home area is, Shreveport, that you have a constitutional home rule charter?

Mr. Pugh Yes, sir, we do.

Mr. Perez Why is it that you don't want to afford the people of the rest of the state the same protection as is afforded to your home parish?

Mr. Pugh Well, brother, what do you think I'm trying to do? I'm trying to let them have all of those benefits that we have up there in Shreveport.

Mr. Henry Would you yield to a question from Mr. Burson?

Mr. Burson Mr. Pugh, it's true, isn't it, under the present law the legislature has been able to grant legislative charters?

Mr. Pugh Yes.

Mr. Burson Well, what would the difference be between the legislature's power to grant legislative charters under the present law and what your amendment would establish?

Mr. Pugh The wisdom of the people not to adopt a legislative law, that's what, a legislative provision of government. That's what it does.

[Record vote ordered. Amendments adopted: 60-59. Motion to table reconsideration rejected: 46-74.]

Mr. Henry Now, we have gone through this so many times and I'm not going to stand up here and explain it anymore 'cause I'm not going to have some of you

jumping up and shooting at me. But if...if you don't know by now what we are doing when we vote to table a motion to reconsider, then you just haven't learned the basic procedure of this convention. Now, Mr. Pugh, do you insist on reconsidering at this time? Well, now you have moved to reconsider the vote and also to table the motion, which motion was defeated. Now, we...you want to reconsider it now or let it go?

[Motion to reconsider.]

Further Discussion

Mr. Arnette I must apologize to this Constitutional Convention because I read the attitude of the convention wrong. I thought they would have defeated Mr. Pugh's amendment very easily, but the thing that Mr. Pugh's amendment does and the reason why I don't want it is it does not permit anyone who does not now have a home rule charter constitutionalized from having anything but a legislative home rule charter, and I don't think we ought to prevent the rest of the state from having the...home rule charter that is not subject to the legislature. Mr. Pugh's amendment does just that; every home rule charter from now on will be subject to the whim of the legislature, but probably the best thing to come out of the...of the Local and Parochial Committee is this section which allows a uniform procedure for allowing local areas to have home rule charters and not be subject to the whim of the legislature. Mr. Pugh's amendment destroys this entire idea, and that's why I urge you very, very strongly to reconsider that last vote and to defeat Mr. Pugh's amendment. I think we need good strong home rule charters in the rest of the state that we have them now. Please allow us to get them. Thank you.

Vice Chairman Casey in the Chair

Point of Information

Mr. Kean Point of information. What is the parliamentary situation on the floor at the moment?

Mr. Casey Ok, the Clerk will...being our parliamentarian, will state the parliamentary situation.

Mr. Poynter Mr. Kean, after the motion was made, following the adoption of the amendment by one vote, to reconsider the vote by which it failed to pass and lay the motion to reconsider on the table, the motion to table the motion to reconsider failed by a substantial vote. Mr. Burson has insisted on the motion to reconsider, so the question before the convention at this time is whether it will reconsider the vote by which it passed the Pugh amendment, which is decided by a simple majority vote. Those in favor of reconsidering it will vote yes; those opposed to reconsidering the amendment would vote no.

Further Discussion

Mr. Perez I would hope that you would listen carefully and attentively to what I would have to say at this time because of the fact that I do know that we are trying to write a constitution with a limited number of amendments. I can assure you that there is no purpose of putting this provision in the constitution in its present posture as passed by the Pugh amendment because of the fact that we do now have and have had for many years legislative authorization for charter forms of government. In spite of the fact that we have had that, time and time and time again, parishes and municipalities have come to the legislature and asked for authority to have a constitutional charter form of government. If you do not go with some direct constitutional authority for the adoption of a home rule charter, I predict to you without any fear of contradiction you will see more and more and more proposed constitutional amendments to give authority to parishes and municipalities to adopt constitutional home rule charters. I, there-

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legislature from saying that a unit may only adopt one form of government as a home rule form of government?

Mr. Avant I think that...I don't think the legislature can do that because the legislature's power is only to "provide a method by which a charter may be drafted or adopted." It doesn't say what can or cannot be in the charter.

Mr. Lanier Would you agree that unless the legislature in this regard is prohibited from acting, that it may do so?

Mr. Avant No, I wouldn't agree with that at all, Mr. Lanier.

I say...the reason I wouldn't do it, because then you don't have a home rule charter.

Mr. Roy Mr. Avant, when you got up you said that it was Article XIX, Section 40. What you really meant was Article XIV, Section 40. I don't want people...

Mr. Avant I'm sorry; it's XIV. I'm not good at reading Roman numerals.

Mr. Roy Right. Good.

Mr. Arnette Would it not be possible for the legislature to say it would take fifty percent or seventy-five or ninety-nine percent of the registered voters in a municipality before they could even vote on having a home rule charter?

Mr. Avant No.

Mr. Arnette Why could they not, Mr. Avant. They're providing the method.

Mr. Avant It says, "a proposal." It says right here, "the governing authority shall provide by ordinance" as to how...that when it shall be submitted.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, we have finally provided for a provision for home rule for the areas that wanted to have it. Let's not now deprive them of that right. Thank you.

Questions

Mr. Rayburn Mr. Pugh, I'm trying to get something clear in my mind. Under your language here, you say "the legislature shall provide the method by which a home rule charter may be drafted and adopted." I'm of the opinion the word "adopted" means that you could say---it may or it shall take seventy-five percent of those voting to adopt it, it shall take forty-five, fifty-five or sixty-five, and then my only concern with your amendment is I think in Section 7 we have made it definitely clear that any provision that is in effect in this state which is Shreveport, New Orleans and Baton Rouge and several others, shall remain in tow, shall remain as they are, and I am curious to know here where you use the words "shall provide a method by which it may be drafted and adopted." I'm wondering if that wouldn't mean that the legislature would have the power to say to adopt this particular home rule you would have to have two-thirds or sixty percent of those voting.

Mr. Pugh Obviously, the legislature can put a percentage in there. You made reference to all of these cities. Of course, I assume that the last amendment that we had in connection with the last session took care of that phase of your question.

Mr. Rayburn Well, the only thing I'm trying to do, Mr. Pugh, is to be fair with these people in this state that at a later date might want to adopt a home rule charter. I want to give them the same protection as the ones that now have one, and

I'm a little curious as to whether or not your amendment will do that.

Mr. Pugh Well, you understand that people have adopted home rule charters under various provisions; they're not alike. Our problem may be less if they were alike; then we could say that you could provide them like everybody has, but that's not the case.

Mr. A. Landry Mr. Pugh, under your amendment, contrary to the present constitution, then my parish could not...this would automatically void 3(D), which gives you a parish charter commission, is that correct?

Mr. Pugh I couldn't understand your question; I apologize.

Mr. A. Landry In other words, under the present constitution as I read Paragraph 3(D) of Section 14, upon a petition of fifteen percent of the electors of LaFourche Parish, we could have a parish charter commission; however, under your amendment this deletes that part of the constitution. It doesn't provide for a constitutional method of getting a parish form of government--parish charter commission, is that correct?

Mr. Pugh It provides for a referendum and provides also for the city fathers to call...

Mr. A. Landry In other words, your amendment has taken away the constitutional rights that we already have under this constitution?

Mr. Pugh If anything, I think my amendment gives them a lot more than what they got under the constitution.

Mr. Lanier Is it not true, Mr. Pugh, that under your proposal the legislature could provide that the method for preparing or drafting of the home rule charter would be by one person?

Mr. Pugh Could be drafted by one person? Yes, but I seriously doubt if the people would adopt it if it was drafted by one person.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, my remark is going to be very brief because I think that most of what I wanted to say was said by Mr. Avant. There's one thing I would like to point out to you; let's don't get the matter confused. There is a difference in the legislature changing the procedures and the legislature changing the charter after it's been adopted. When the charter has once been adopted, I don't care whether it is by constitutional amendment or by act of the legislature, that is a charter insofar as those people are concerned. That's home rule and there's nothing in the world the legislature can do about it. And let's get that straight. The legislature can change the procedure, yes; it can change the procedure, but not the charter. Now, that's what we are talking about. Now, let's don't get up here with all these ridiculous arguments about one man writing a charter and then the legislature turning around and changing it. That legislature is composed of people just like you and I, and if we are going to do what's right here, the legislature is going to do what's right, and that's as simple as that and just don't forget it.

Questions

Mr. Rayburn Senator De Blieux, I certainly agree with you that once it's adopted. My only concern is the method of adopting it in the future; it is left, the way I read this language, entirely up to the legislature to provide a method...it says "to provide a law...a general law shall provide the method of which a home rule charter may be drafted." Now, I think the word "drafted" means that the

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doubtful, but in the name of fairness I think we owe it those areas that have not been able to adopt constitutional home rule charters prior to this time to leave open a way for them to do so in the future if they feel that the needs of their localities require it. Now, whether or not the particular provisions that the committee has submitted should be changed, of course, is always open to question, but I do ask you to reject this amendment which, in my view, would do nothing more nor less than leave localities dependent on a legislative charter because when you say that the legislature "shall by general law provide the method by which a home rule charter may be drafted and adopted," you don't have to be very smart to figure out that the dominion group in the legislature can make it so hard to adopt one of these under that general law that you'll never have one adopted. So, I ask you, in making your vote on this issue, set aside for a moment the tugs on the coat sleeves that you have had since we started debating this article, the request for favors, the request for return of a favor that you've previously done, and think about one thing. Do your people at home, wherever you come from in this state, want the opportunity to enact a home rule charter and have it given constitutional status as the charters are in Shreveport, New Orleans and the other areas that have them now?

Question

Mr. Bean. Mr. Burson, you touched on the language "the legislature by general law shall provide." Suppose the legislature did not undertake to adopt a general law which would provide; would you have any means or recourse to enforce this provision?

Further Discussion

Mr. E.J. Landry. Mr. Chairman, ladies and gentlemen of the delegation, I want to represent for a moment, the people who do not have representation here. I want to read this as the laymen would hear it. I want to give you my interpretation; I'm not a lawyer, but I do know how to read and you have listened. I'll repeat you've been very good to me; you've been kind. I've tried to be patient, tried to understand, I've watched. This is a crucial issue; it needs attention, serious attention, and I'm worried very often by the unserious attention that we give to some of the deliberations. I'm going to do what is very difficult to do sometimes. You did the right thing a moment ago when you postponed a decision. I want to pay tribute to the people who voted yes. Sixty, sixty people voted yes, and I want to pay tribute to the fifty-nine people who voted no. I voted no, but because of the discussion and the deliberations that ensue, I have been enlightened; I have learned, and I'm going to do what I think is right at this moment. I'm going to change my vote because I do believe that there is nothing in this provision that will prevent the kind of home rule that you and I want. Again, I do have tremendous faith in the legislature; I came here to exemplify that, and I'm doing it at this time. I hope that you accept this amendment as proposed; it's a good one. Take a good look at it. It gives you and it gives me, and it gives the people that I represent what they need.

Further Discussion

Mr. Wall. Mr. Chairman, fellow delegates, I'm glad to be back with you, particularly happy to be here before this amendment is adopted. You know, I can't see how that you can vote for this amendment if you are for home rule or if you're against home rule, unless you are for different classes of home rule. Back in the last section we adopted, and really put the clincher on for the home rule in Mr. Pugh's home city of Shreveport, and a couple or three other big cities, but now they get their class of home rule; it's not in. Anyone else that has home rule, say like West Monroe where I'm from, they are not set in. You've

got two different classes of home rule under Pugh's amendment. Now, for these up here that want the home rule then they retain all of their home rule, but the rest of the state, no. Now, how can you be for two classes of home rule? Now, of course, I'm a member of the legislature, but under Mr. Pugh's amendment here, the legislature can set out whatever home rule charter they desire under his amendment. Now, of course, I don't think the legislature is that bad myself, but it's just a case--- doesn't make any difference whether you're for home rule or against home rule, I don't see how you can be for the Pugh amendment. It goes on and says that when it's adopted by the electors, it doesn't say how it's going to be adopted, how many or what. This is really an amendment that is not a good amendment, if you're for home rule or if you're against home rule. I can't see how any of you could want to protect Shreveport, Baton Rouge, and New Orleans, and Jefferson, and get a different class, a different class of home rule for the other places in this state. I'm going to tell you, I hope that those people who are for home rule in those areas, doesn't vote for the Pugh amendment. The people from Jefferson, East Baton Rouge, New Orleans, and Shreveport, don't vote for the Pugh amendment so they can have one class of home rule for the people in those big municipalities, and then another class for the other places in this state; so I'm going to ask you to vote down the Pugh amendment.

Questions

Mr. E.J. Landry. Mr. Shady Wall, I want to ask you a very serious question, and in asking you this question I want the members of this convention to hear the answer. This very serious question pertains to the statement that you made a moment ago. The legislature in this article, by a general law, only provides for a method by which this amendment may be drafted and adopted. Now, there's a tremendous lot of confusion here, but that's all it provides for, a method, that's all. Now, there's been a lot of confusion injected, but that's all it says. Is that not true? Is that not true that the legislature...

Mr. Wall. Yes, it is a method. That is correct.

Mr. E.J. Landry. That's all!

Mr. Wall. No, that's not all it says.

Mr. E.J. Landry. In that line, the legislature by general law shall provide the method, and that's all.

Mr. Wall. Is that your question?

Mr. E.J. Landry. Isn't that what that line... That's it.

Mr. Wall. When you finish, then I'll answer, but I can't answer it when you continue to talk. Are you finished?

Mr. E.J. Landry. Finished.

Mr. Wall. Mr. Landry, I can see that you've been around the legislature a long time, but you haven't learned all of the authority that the legislature may exercise. Anytime you give the legislature the authority to adopt a method for adopting a home rule charter, they can enact legislation and put the method as such, they can limit the authority of which that home rule can be, so that's what I'm saying. It's not that I don't have faith in the legislature but it's not right to have two classes of home rule.

Mr. Roemer. It is good to have you back. I would like to ask you to tone down your comments, though, you knocked over a man right behind me with the force of your wisdom and logic.

Mr. Wall. That's not the first one I've knocked over, Mr. Roemer.

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Mr. Wall Mr. Roemer, for your benefit, I'll read it to the entire delegation. I've read it, but I want to clear up any question in your mind...

Further Discussion

Miss Perkins Ladies and gentlemen, let me first thank you for giving me the opportunity to speak to you. On the way up here, Mr. Derbes said that I should remind you that home rule is like charity, that it begins at home and not in the legislature.

One thing that amazes me, I am an attorney, and I never understood why people got up here and immediately said, "I'm not an attorney." Well, I'm going to tell you that I don't know that much about the systems of local government. But I have learned a great deal. I have seen this convention give constitutional status to the home rule charters of the cities of New Orleans, Shreveport and Baton Rouge, and Plaquemines, and the home rule charters of the cities of New Orleans, Shreveport and Baton Rouge. In other words, we've given constitutional status to all existing home rule charters. I cannot understand why, if we have given these home rule charters constitutional status, we refuse to give the same status to other future home rule charters. It takes a mandate of the people in order to establish the home rule charter. If they want their charters, then we should certainly give them the status that we have given the existing home rule charters.

I do agree with what Mr. Perez stated earlier. It would seem to me that if we leave it to legislature, and legislature is petitioned, and they grant authority to establish a home rule charter, and this....the proponents of the home rule charter want constitutional status, then it would seem definite that we'd need a constitutional amendment to give them the same status of the existing home rule charters.

Therefore, I ask that you reconsider and cast your vote against the Pugh amendment which provides that legislature shall have authority as opposed to giving constitutional status to all future home rule charters.

Questions

Mrs. Warren Miss Perkins, I'm not asking you this question because I am for or against what's going on right now. I'm just asking for information.

From the very beginning when these others got their constitutional provisions, who set the method? Was it from the cities or municipalities or who? Who set the method? Did it have anything to do with the legislature?

Miss Perkins Well, I gathered part of them are
statutorily established. Now I don't know this
for sure, Mrs. Warren, but from listening to the
discussions, some of them were established constitu-
tionally; the remaining were established by
legislature with legislative consent which made
them constitutional. But we have changed them all
to constitutional status.

Mrs. Warren Yes, but you still haven't answered my question. Who set the method? I think I heard from the podium up there that this was...the legislature would set the method. I think that's what was said from the podium.

Now, who set the method from the beginning?
This is what I'm trying to find out. It has to be
the parish or who?

ties, but you will have to direct your question

Mrs. Warren Well, I'd like to ask anybody because

Further Discussion

Mr. Womack Mr. Chairman and fellow delegates, I had pretty well committed myself to keep my seat and try to expedite the workings of this convention. It's a little bit hard to do in view of some of the discussion that's gone on. I don't believe the 1921 Constitution gave anybody the right of a home rule charter, so it had to originate somewhere.

They came to the legislature, and the legislature very liberally, wisely or unwisely, granted them the right. Now this is the bad legislature you hear about that you can't trust. They granted the right. Some of them are operating today under constitutional charters passed by two-thirds of the legislature, then adopted by the people as an amendment to the constitution. Others are operating today under home rule charters by legislative act. I think one of them is just as solid as the other. The primary reason for leaving them in the constitution under the present provision is that they want that constitutional right. By statute they can lose now under this amendment to give them all the general authority by legislative act. But we hear: "We don't want the state messing with our local affairs. The greatest thing I've ever heard is home rule. Leave us alone. For God's sakes get back to Baton Rouge. Get the state out of our business." And one of these days I hope I can see it in the back of the state last, the last time I checked, doled out over six hundred billion dollars back to local government.

Yes, leave us alone. Give us every damn thing we want and then leave us alone. That's home rule. I don't know...I've heard so much about we can't trust the legislature, then to come back and pass a simple act giving us the right of home rule. I don't know of any city yet that comes up and asks for a charter for home rule that would have any opposition at all in the legislature. But we can't trust the legislature.

I don't know. We go on and on with this. This is a general provision and I see nothing in the world wrong with the legislature come back and set up the provisions by which you can adopt the home rule charter. You think it's better to set up eighty, eighty-five percent, I think that's more absurd than saying that they are not going to even give you the right to adopt it. It has generated a lot of discussion, but I don't think at this time I've spent there has been that a local bill, coming up adverti... that is, properly advertised, and it has to be, asking for authority to do something locally, if the local legislative delegation supplied it, has introduced it, it doesn't have any oppositions.

Oh, I remember once or twice when somebody got up and spoke against it and wound up getting one other vote with them. You can't trust the legislature to give them the right to set up a home rule amendment. You trust the legislature to give them the right to tax, to do the things that do everything in the world to you, pass sales tax, consumer taxes, tax your medicine, your doctor bills, everything else. But we can't trust them for home rule.

— Sen. J. Edgar Hoover

to the absurd point, and I don't think in some of the things that we've done. I think we've got to credit that it should have.

ME Pugh I'll ask if the chair will be able to
to inform people-like mouth with button to push
depending on which way we want to go. (continued)

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for asking the Chair to do it. But rather than speak five minutes, I'm going to let you speak ten seconds.

[*Motion to reconsider adopted: 43-48. Previous Question ordered. Record vote ordered. Amendments rejected: 49-65. Motion to revert to other orders adopted without objection.*]

REPORTS OF COMMITTEES

[*1 Journal 508*]

Announcements

[*1 Journal 508-509*]

[*Adjournment to 2:00 o'clock p.m., Friday, September 21, 1973.*]

10:00

ROLL CALL

PRAYER

It is the privilege of witnessing for You. You have tried to teach us that we came from You, and that we are here for You, and that we are going back to You. You have tried to teach us that number one rule in Your constitution is to love You. Your number two rule is to love your neighbor as yourself. Please give us the courage to apply the rules, the proposals, that You instituted for me and all of the members of this convention. Thank you, Lord.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES LYING OVER

Mr. Poynter Delegate Proposal No. 27, introduced by Delegate Denberry.

A proposal to establish state and city civil service.

Comes from the Committee on Education and Welfare, reported unfavorably.

Motion

Mr. Henry The gentleman now moves that the proposal be withdrawn from the files of the convention. Why do you rise, Mr. Denberry?

Substitute Motion

Mr. Denberry I wanted to move that it be passed to its third reading.

Discuss

Mr. Flory Mr. Chairman and delegates to the convention, I hate to rise at this point to object to Mr. Denberry's motion, but I feel compelled to do so. If you recall, when we established the rules of this convention, we assigned the subject that was a controversy at that time as to where the subject of civil service would be assigned, whether it would be to the Committee on the Bill of Rights or to Education, Health and Welfare. This convention decided that it should go to the Committee on Education, Health and Welfare. We spent the past eight months in that committee, a great portion of our time, both on the subcommittee and subsequent to our reconvening in July by the overall committee, in the subject of discussing civil service, both for state and city employees as well as municipal fire and police. That committee has made a judgment, has reported to this convention a committee proposal which is up for your consideration. Subsequent to that, Mr. Denberry saw fit to introduce as his privilege two delegate resolutions. He came before that committee, the entire committee, and we discussed it. We discussed it, and we reported for that proposal, and the committee reported those proposals unfavorably. I am asking you to uphold the committee and to reject Mr. Denberry's proposal.

Further Discussion

Mr. Denberry I am asking you to uphold the committee and to reject Mr. Denberry's proposal.

Further Discussion

Mr. Denberry I am asking you to uphold the committee and to reject Mr. Denberry's proposal.

delegate's proposal regarding civil service employment. It also conflicts only in part with the committee's proposal. The committee's proposal is the sauce for the goose was sauce for the gander. I thought that I would like to have my delegate proposal and come before the convention. Thank you.

Questions

Mr. Flory Mr. Denberry, isn't it true that the delegate proposal that you mentioned, one portion of it is not covered in the committee's proposal, and the other is almost identical to the committee proposal?

Mr. Denberry course, mine is...some of it is not covered by the committee proposal, some of it is identical to the committee proposal, and some of it is different from the committee proposal.

Mr. Stagg Mr. Denberry, your Delegate Proposal No. 27, is it the document that's nine pages long printed on buff paper?

Mr. Stagg Is the committee proposal the one numbered 10 that takes forty-seven pages?

Mr. Stagg All right. How long is the Committee Proposal No. 9?

Mr. Denberry About twice as long as mine about fifteen pages.

Point of Information

Mr. Tobias My question is more or less directed to the Chair rather than to Mr. Denberry. If, for example we move to...adopted Mr. Denberry's motion to refer this to third reading, would that prohibit us at a later date from not considering the proposal? In other words, could we consider it after the proposal on civil service from the...

Mr. Henry I'm not...I don't think I understand your question, Mr. Tobias.

Mr. Tobias In other words, is this issue really before us whether we should consider this? Could we not, at a later date decide? In other words, pass it to its third reading and just forget about it, just leave it.

Mr. Henry Well, if you pass it to its third reading, you are not going to consider it. If you pass it on Third Reading and Final Passage, don't you see?

Mr. Chatelain Delegate Denberry, hasn't other business been discussed? That is, is this the only thing you are trying to do, sir?

Mr. Chatelain Thank you, sir.

Denberry Withdraws

Mr. Denberry I am asking you to uphold the committee and to reject Mr. Denberry's proposal.

tee and subsequently in the committee. Virtually every change or amendment was adopted or failed to be adopted by votes of 4-3 in the subcommittee, and subsequently, the chairman had to break ties in many occasions, 10-9, to bring the matter out. Now, I submit to you that if you want to hear the whole story and see the whole picture, you should vote in favor of the Denney substitute motion and let this matter be passed to its third reading. I urge your support of the proposal.

Mr. Hernandez. Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to Mr. Dennergy's proposal to pass his delegate proposal to the third reading and final passage for the reason that Mr. Dennergy is appointing a person who has heard civil service on our subcommittee ever since we commenced our hearings last January. I, too, have attended all of these committee hearings, both subcommittee and committee hearings, and I have heard everybody in this country that wanted to speak and some, in fact, some came from New York to speak on this question. We have never denied anybody the right to be heard, and we have never denied anybody the right of civil service. It was only after due consideration that Mr. Dennergy's proposal was reported unfavorably. The reason being it did not cover all of the phases of civil service that are now in our present constitutional amendment. I think the people wanted to see in the present constitution. So, for that reason I hope that you will defeat this motion by Mr. Dennergy to pass this to the third reading and final passage. We have heard it so long, and I think it has been amply aired out. Thank you so much.

Mr. Sutherland. Mr. Chairman, fellow delegates, I rise in support of Mr. Denney's motion or proposal to to submit this proposal to third reading. In our committee, we have had a lot of discussion on civil service, I agree with Mr. Hernandez. But, I'm not sure we had the type of discussion on the proposals that we should have. We're not discussing the police and firemen right now, but that one went through without any discussion. I would certainly think that this convention should have the opportunity to consider the delegate proposal. If you would want to vote it down at that time, but certainly you should have an opportunity to compare it to what the committee put out. I would urge its support. Thank you.

Mr. Poynter The next proposal is Delegate Proposal
No. 28, introduced by Delegate Denny.

Comes from the Committee on Education and Welfare, reported unfavorably.

Mr. Roy Mr. Aertker moves that the proposal be withdrawn from the files of the convention.
Is there any objection?

Mr. Denny. Mr. Chairman, I offer as a substitute motion that it be engrossed and passed to the third reading.

Mr., action: [user: this, eat that we are going to

Mr. Roy. It means, Mrs. Warren, that we are presently, I wasn't here when it first began, but you will discuss all over again, after you want to do a show on for a third enjoyment and about the debate later just like this last one.

Mr. Denberry The second proposal, the proposal that is now before you, is really part of the first proposal. I made it a separate proposal because I felt it belonged in the schedule rather than in the constitution itself. It merely provides for transitional measures with regard to the changes in the various civil service commissions. Since you very kindly to me approved my last motion, I would appreciate your voting the same way this time because the two are really the same.

Mr. Denberry I'm not sure what the vote on this particular proposal was, Senator, because I was in another committee meeting and had left before it was voted on. I left after the first one was voted on. It was probably a rather large majority, though.

Mr. Flory Are you aware, Mr. Denberry, that the vote in the committee, according to the minutes of the committee, on the proposal we voted on awhile ago was 9 yeas and 2 nays to report the bill unfavorably, and the vote was 9-2 on this one to report it unfavorably?

Mr. Dennerly I was aware of the first one, Mr. Flory. I wasn't aware of the second one. I might point out, however, that that committee contained, I believe, twenty-one members, and the vote was 9 - 2, so the vote of nine was not even a majority of the total committee. I am further aware of the fact that when the matter was discussed, I came into the meeting at the invitation of the chairman and was refused the opportunity to ask you a question when you closed on your motion.

Mr. [redacted] know who sent for me, Mr. Flory. As I said, I thought the chairman had for [redacted]. It quite possibly was you.

Mr. [redacted] Yes, [redacted] "That's why I was

the opportunity to ask the questions.

Mr. Lennox Mr. Denberry, I just want to be sure that you understand and every delegate on the floor understands, and I phrase this in the form of a question. Do you know that there are twenty-one members of the Committee on Education and Welfare, and only eleven voted, as previously outlined by Mr. Flory?

Mr. Denberry Yes, sir, I am aware of that.

Further Discussion

Mr. Flory I was saying I was going to rise to explain simply what Mr. Denberry did, that this was just a transitory means of... If, in the event the proposal passes, I'm going to be able to get it into or getting it into action. So, I don't

Mr. Brown and Mr. Denberry

Mr. Brown Mr. Chairman, fellow delegates, I'll be very brief, but I'd just like to add a word of caution when we get into considering delegate proposals and they come back voted unfavorably. A lot of people believe in the committee system, and there are certainly pros and cons. But, I would hate to see us get to the point to where six or seven delegates determine what all of us on this convention are going to hear. To say that we should just go right down the line with committee proposals, I think, would be a mistake. Committee proposals, as a lot of us know, are often lopsided in favor of a particular point of view. In this case, we're talking about six or seven percent of the delegates of this convention even voting on the whole question. I'm not really here to defend what Mr. Denberry's proposal is trying to do. I think if you look at the record, I vote against Mr. Denberry most of the time. But, I do think he ought to have a right to be heard and I think that's one of the problems we have in this convention--the fact that we have to go by a committee proposal without any information at all. I'd like to throw out a word of warning. As we get into more complicated articles, up till now, things have been pretty cut and dried on the Bill of Rights, on elected officials versus appointed officials. These are pretty cut and dried questions. It doesn't take a whole lot of deep thinking to determine in terms of complicated issues, how you're going to vote. But, when we get into the areas of local and parochial government, revenue and taxation, I'm chairman of a subcommittee, we've been studying this area for six, seven, eight months and I still don't understand a lot of the things we're talking about. It's going to get very, very complicated, and I hope we don't make the mistake of cutting off the chance to fully air a particular point of view just because the committee proposal was passed and a delegate proposal was turned down. I just want to urge that as a word of warning. Like I say, I'm not saying I disagree or agree with Mr. Denberry at all, but civil service is something that is the utmost importance to the future of this state. I think we ought to have every opportunity to hear every single side of the issue on something that important. You can say, "Well, we can get bogged down." I realize we can get bogged down. We've got to give some guidance to what the committees have to say, but as we get into more complicated areas, I think we've got to bend over and give every leeway to delegate proposals as we move along. Yes, Mr. Flory, I'll answer your question.

Questions

Mr. Flory Senator Brown, are you suggesting,

that we should have a committee on the committee system?

Mr. Flory Yes, I'm suggesting that we have a committee on the committee system.

Mr. Flory Yes, I'm suggesting that we have a committee on the committee system.

picked our committees based on our particular interests. You take Revenue and Taxation. On the Revenue and Taxation Committee a lot of people who have particular interests in that particular area, and it has certain weighted vested interests. All of us do; I think you do on the committee you chose. You have a vested interest in the particular area in which you are interested in. More power to you. That's the great thing about this convention. But I don't think you want to be wanting to hear all sides of an issue or something as important as civil service. Quite candidly, I think you and I will probably vote the same when the thing comes out to its final conclusion. But it's so important that I want to hear every single possible side. I think in that area, the committee system has some real weaknesses. I think we are going to be making a mistake if we just bow to the committee and start piecemealing. That's one of the problems we have right now. Look at the committee proposals we've had so far--Bill of Rights. How many amendments were there? A hundred and some odd amendments. The Local and Parochial Article we're looking at right now. It's being cut to pieces by committee amendments because a lot of us didn't have a chance to put the proper input into what that committee was doing. So, yes, there are some real weaknesses in the committee system that we have right now.

Mr. Flory Well, I appreciate what you say, Senator, but I think it's also true along that same line, that Mr. Denberry with his delegate proposal could by the way of amendment, do identically the same thing we've been doing. I think the delegates to hear both sides. There's not a great deal of controversy that exists between the two, but you could have heard both sides by the way of amendment route?

Mr. Brown He could, and we'd throw one amendment after another amendment after another amendment, we're voting on these things by votes of 55 - 54. Only about seventy percent of the delegates are even here, and I think it's a real slipshod way we're doing business right now. I'd much rather hear it in the form of a delegate proposal, even though I may vote against him. I want to see we have an overall hearing to the thing.

Mr. Goldman Senator Brown, you talked about bogging down. Isn't it true that the reason we're bogging down is that we have so many parliamentary maneuvers that waste so much time, that if we'd get to the point a little quicker we could go ahead and listen to all of this and hear all sides of it and get something accomplished? With all the parliamentary maneuvers we take up so much time or more as we would if we'd listen to all the proposals.

Mr. Brown Well, Mr. Goldman, I'll say this to you. A democracy is a bogged down, slow, tedious process, and a lot of us just don't have their minds made up like you may have. I don't on a lot of questions like this one right here. Maybe I don't have your background and wisdom. I don't know what I want to do on civil service, and I want to hear every possible solution that may be offered.

Mr. Goldman My question wasn't that I didn't want to listen, my question was, isn't the fact that we bog down so much because we argue so much in parliamentary maneuvers that we could get something done if we just listened to all the proposals?

Mr. Flory Unfinished Business.

Mr. Flory Proposal No. 17, introduced by Delegate

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chial Government, and other delegates and members of that committee.

A proposal making general provisions for local and parochial government, levee districts and ports. The financing thereof and necessary provisions with respect thereto.

The status of the proposal at this juncture is the committee has adopted as amended Sections 1, 3, 5, 6 and 7 of the proposal. Has voted to delete Sections 2 and 4 of the proposal. Presently has under consideration Section 8 of the proposal.

Mr. Chairman, numerous amendments still pend to Section 8.

Chairman Henry in the Chair

Amendments

Mr. Poynter Amendments sent up by Delegates Roemer, Kelly, Ginn and others.

Amendment No. 1. To delete lines 22 through 32 both inclusive in their entirety, and insert in lieu thereof the following:

"Section 8. Home Rule Charters

Section 8. Except as may be inconsistent with the provisions of this constitution, any local governmental subdivision or subdivisions may draft, adopt, amend, or repeal a home rule charter. A proposal to adopt, amend, or repeal a home rule charter may be made by the governing authority or by petition of at least ten percent of the electors, or ten thousand electors, whichever is the lesser, of the governmental subdivision or subdivisions affected thereby. Such proposals shall be filed with the officials having full charge of elections, having charge of election and with the governing authority. It shall fully set forth the proposed charter, amendment or other proposal. The governing authorities shall provide by ordinance that the proposals shall be submitted to the electors at the next scheduled election held in the local governmental subdivision or subdivisions not less than sixty days after its passage or if requested in the petition at a special election held not less than sixty days, nor more than ninety days after adoption of the ordinance." Now this sentence has a change in it. "Any such charter amendment or repeal shall become effective upon the approval of, and here's the change, a majority of the electors voting of the governmental subdivision or subdivisions affected thereby." It's not approval of the electors but a majority of the electors voting of the governmental subdivision or subdivisions affected thereby.

Explanation

Mr. Roemer Mr. Chairman and fellow delegates, this amendment, of course, is related to a subject that we've been on for a number of hours now covering into its second day. Purporting, trying to define a home rule charter, trying to make provisions, not only for those home rule charters that now exist, but for those that may exist in the future. Points were made yesterday, and I think the points were well-taken in regard to the Pugh amendment, that when its provision that the legislature shall by general law provide for the method of drafting and adopting the constitution, that we left ourselves open for perhaps some excessive perimeters or conditions or boundaries on the adoptions of such charters, which would in effect prohibit future home rule charters in the state. My amendment, although it has been pointed out to me it's not perfect in all and every manner, I think, eliminates that objection. It also has a couple of other changes; one of which is the fact that we've reduced the fifteen percent requirement of the electors on a petition basis to ten percent, and also inserted the provision which required "or ten thousand electors, whichever is the lesser." That, of course is directed to the city of New Orleans at least, and others perhaps, who have that requirement in their home rule charter. With the insertion of that language we would permit the city of New Orleans, as pointed out to me by Mr. Bergeron yesterday, to

continue to petition to amend their charter with just ten thousand signatures and not require ten thousand of the...ten percent of the total electorate of the city of New Orleans. Some have complained that we don't make home rule charters strong enough in the provision that I've offered here today. I think quite different from that. I think we call for a home rule charter; we let any local political subdivision have the right to call through an ordinance for an election to have a home rule charter, and so do just that if they get a majority of the electorate in that local political subdivision. Now what more than that they want--what more than that we give them? What more independence of the people of this state, which is represented by our legislature, do we want to give them? I think I've drawn the line here. I want you to understand my amendment if you will. I think it does call for strong home rule. I think it does not do injustice to a fair constitution for all the people, whether they happen to live under a home rule charter at present or not. We're trying by this to not prohibit, or to state it in the positive, to allow those local political subdivisions, who in the future want to formulate and form under a home rule charter, that right. I will say as has often happened in this convention after a day or two of thought and several hours of debate, we've had to work out a compromise. I don't think Section 8 is going to be any different. I think we could stay here for hour upon hour and day upon day, and yet some of us be quibbling with a word here or a sentence there. I would like to think that the local political subdivisions, of which we are all a part in some form or another, would agree to live under this constitution, allowing them the flexibility for home rule charter formulation. What more than that they want, I can only guess at but cannot support. I'll yield.

Questions

Mr. Lanier Delegate Roemer, the first sentence here says, "Except as may be inconsistent with the provisions of this constitution." Then the second sentence which is intended in part to set forth the amendatory process and save the amendatory process in the city of New Orleans, is that correct?

Mr. Roemer That's correct.

Mr. Lanier But by doing this, will you not be invalidating the amendatory processes that are in all of the other home rule charters in the State of Louisiana?

Mr. Roemer No, not necessarily. It depends on what their percentages are, Walt.

Mr. Lanier If their percentages would be greater than that set forth in this law, is it not true that they would be invalidated?

Mr. Roemer If there's, for example, fifteen percent which I guess is what you and I talked about might be in some home rule charters, under this provision that would be ten percent.

Mr. Lanier If the home rule charter, which is the will of the people in that unit, sets up an amendatory process that goes beyond the limits prescribed herein, then that is invalid, is that correct?

Mr. Roemer In regard to the electors, yes, the amending process.

Mr. Lanier So, really, you are saving New Orleans, but you're kind of sticking it to some of us. Would that be accurate?

Mr. Roemer No, that's not...do you know of all the home rule charters in the state, how many have ten percent or how many have fifteen percent?

Mr. Lanier I haven't had a chance..

Mr. Duval: Buddy, the main objection I have to this is that the legislature shall not pass any law the effect of which changes, modifies, or affects the structure and organization of any local government subdivision." If an amendment... do you think that your amendment really takes the heart out of the home rule charter by leaving out this language?

Mr. Roemer: I don't think so. I think that's the crux of the issue, Stanley. There has been some court rulings as to what structure and organization is, as you know, and it seems to me the court ruling seems to blur the distinctions between powers and functions, and just because we say "structure and organization" here and leave out "powers and functions," I still think they've left over for interpretation one way or the other.

Mr. Duval: So is it your intent to allow the legislature to pass laws affecting home rule charters insofar as structure and organization is concerned?

Mr. Roemer: Well, I think that the record clearly shows that without the support of the legislators from the district in effect, the local political subdivision, you won't have any such action by the legislature.

Mr. Duval: Other than that?

Mr. Roemer: Can I guarantee that to you?

Mr. Duval: Yes, sir.

Mr. Duval: Right.

Mr. Roemer: With questions like yours, I can only guarantee you one thing, Mr. Duval.

Mr. Duval: You will tell me... the answer is though that the legislature can, under your amendment, pass such a law. Is that right?

Mr. Roemer: Can do it.

Mr. Duval: Thank you.

Mr. Roemer: I might say one word in regard to Mr. Lanier's question. If you read it closely, which I obviously failed to do at the moment you asked the question, well, it says, "at least ten percent of the electors." That's not an absolute figure. So if the home rule charter now had fifteen percent, it would not be invalidated. Do you see that? So that takes care of that objection.

Mr. Kelly: Buddy, is it your interpretation of this proposal that this is a provision allowing for legislative charters, or do you feel that any charter that would be adopted under this particular proposal would be a constitutional charter?

Mr. Roemer: Well, it seems clear to me that when we allow for the drafting, the adopting, the amending or the repeal of the home rule charter in the local political subdivision, they can set up the charter like they want to, and once that charter is there, there it is. It says, "except as may be"

with the provisions of this constitution." Now, we're going to have to deny them something in that home rule charter somewhere along the line for us

you remember yesterday, Dan, in the debate on this thing, it was brought up, and I think correctly so that the inclusion of that language left in doubt once again the legislature's right to change the structure and organization. It was the committee proposal. Let me give you a clear committee proposal says, that "the legislature shall not enact any law which affects the structure and organization in regard to these home rule charters." And then it goes on to say, in that paragraph, and you point out, it lists those offices specifically which have to do with structure and organization, but it does not include all the offices. So the inference to me is that if they say they can't do it on the one hand, and then they list some exemptions on the other hand, then perhaps these other offices are under the influence of structure and organization.

Further Discussion

Mr. Lanier: Mr. Chairman and fellow delegates, it is the moment of truth for home rule in the State of Louisiana. I want you to consider carefully the differences between the amendment which I proposed and the committee proposal. The primary difference, there are several differences, but the main, primary, overriding difference is the fact that the provisions of Section E of the committee proposal are left out. Now, the provisions of Section E of the committee proposal, if you will look at it, the pertinent part is lines 26 to the end and finishes up on the next page. But it says, "The legislature shall not pass any law the effect of which changes, modifies, or affects the structure and organization and/or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter. This is a constitutional guarantee that if local units of government, and what are local units of government composed of, that's the people that live there... adopt a home rule charter, the legislature cannot meddle with their organization and structure. Now, what is the effect of not having such a proposal in our new constitution? The effect of it is that the legislature is not prohibited from meddling with your organization and structure, and therefore, it has the power to do so, because the legislature in the State of Louisiana by our constitution and under the Tenth Amendment of the United States Constitution, has all of the legislative powers. Now, what does that mean? If the people in your town such as I did, mine just did it by an overwhelming majority, decide that a certain form of government is the best, that this is the best way for us to run our own affairs, even though we adopt such a

interfered with by the legislature. Now, this you can get, and the people have to make as individual a policy decision, is type of protection to the people? I would submit if you do not afford

be the reason for the home rule charter.

Why do people want to go home rule?

Why do people want to go home rule?

Why do people want to go home rule?

Why do people want to go home rule?

Why do people want to go home rule?

Why do people want to go home rule?

Why do people want to go home rule?

der letter (b) exempts the office of clerk, coroner or assessor... would not be the provision of the home rule. What

Let me point out to you that it doesn't have in it the first sentence any requirement that the local governmental subdivisions which draft such a charter, if it's more than one such as in the situation of Lafayette or some other place, there is no requirement that they be contiguous. This should be something that should be in there. When we get to the second part that is set up by the admission of Mr. Roemer with the idea and intent of, for one thing, saving the provisions of the amendatory process of the city of New Orleans which we knocked out yesterday with the Section 7 that we adopted, while it does say that the proposal may be submitted by at least ten percent of the electors, it also says "or ten thousand electors, whichever is the lesser." "Whichever is the lesser." So, if there is an existing home rule charter in the State of Louisiana that has a provision that is inconsistent herewith, that provision, even though we're saving New Orleans, will be rendered invalid by this provision. Now, as far as I'm concerned, we should make this law applicable to everybody and let them do that would be to provide that this amendatory process shall only be applicable to those who do this in the future. Why do you want to shackle those who have done this in the past with this? Because they have already adopted their charter, and think of it from this point of view. In a home rule charter the people of one unit have decided how they want their charter amended. They had to vote on this. This is the way they want to do it. By putting this proposal in this article in effect, what you are doing is substituting our judgment here in this convention for that which has been exercised by people on the local level. In this particular instance in my judgment, this is not a fair practice. Therefore, fellow delegates, I would suggest to you that this amendment should not be accepted by you. I would further suggest to you that the committee proposal adequately and properly establishes valid home rule for the State of Louisiana. I would request that you reject this amendment and adopt the committee proposal. Thank you, Mr. Chairman.

Further Discussion

Mr. Roy: Mr. Chairman, ladies and gentlemen of the convention, the committee keeps failing to tell you that this is the old story of the tail wagging the dog. That's all they are trying to put over on you. Let's look at what the committee proposal says in light of what Mr. Lanier just said. Let's look at what they are trying to do, because you see if they can defeat enough of these amendments which I think are great, then they'll have us having to buy and swallow what they have done with their proposal. First of all, let's look at the theory of a theory for you people who are not lawyers that what the legislature doesn't grant to cities they are precluded from doing, and there's a good reason for it, because the legislature can't possibly tell every municipality, every local subdivision, what they may or may not do. So you have the general law that way which you know just like the United States Constitution, and what is not specifically granted by the Constitution, the Federal Constitution, is prohibited. Now, look what they say though at line 30 on page 4. They say that "those things not provided by general law or this constitution, they may do in the future. Now that raises two questions. One, there is no way that the legislature or we here today can deny to them certain things that they would like to do in the future; income tax, taxing the people beyond any source of revenue that they can possibly raise, allowing for any type of conduct or illegal maybe activity to go on in the various municipalities without being able to be subjected to general law. Besides that, it raises a second issue, if they say, "No, no, you're wrong, Mr. Roy; the legislature may tell us in the future what we may not do." I doubt seriously that if they have already become adopted home rule charter cities that the legislature may ever deal with them. That's the first thing they try to do. The next thing they try to do that they don't tell you

about, and I have to get in the lawyer language. is to constitutionalize this La Fleur case which said that, "with respect to structure and organization, the legislature, even by general law may not deal with a home rule charter." But you see, they don't stop there; they go further, and they add at lines 30 and 31, "and/or the particular distribution and redistribution of powers and functions of any local government." That's because the Supreme Court said in La Fleur that you can, the legislature can, by general law deal with powers and functions. Now, if they say, "No, Mr. Roy, you're misreading that; that's not what it says." Well, then why have it in there at all? If it doesn't mean anything, why have it in there unless the object is to argue a case before the Supreme Court in the future, that we, the constitutional delegates, said that henceforth, we will not even be able to deal with them with respect to powers and functions. Now, I don't understand Mr. Lanier's argument. Yesterday, near his say all day long about "Let's not deny to the people the great benefits of home rule charters." So, we've come here today to accommodate Mr. Bergeron and others, and we say, "Well, if home rule charters are so good, damn it, in the future ten percent or ten thousand people ought to be able to modify or ask for a change." And they get up today and say, "Oh, no, no. You may change some present home rule charter, that was written in 1898." Do you think the people in that city under a home rule charter in 1898...now presently have acquiesced in necessarily what they put in a home rule charter in 1898? I think we're smart enough to be able to say that ten percent or ten thousand people of a local subdivision want to change, have a right to petition for the change. Now, they say, this committee said, they don't use arbitrary figures. The first thing we took up yesterday was the fifty thousand people necessary to form a new parish. That was taken out of the air. So, this business of saying that people in 1898 necessarily knew what they needed, just doesn't follow. Now, there is nothing, in my opinion, and let me point out one final thing to you. Yesterday in Section 7, we stated that any plan of government or home rule existing or adopted which presently comes into existence at the time of this new constitution may not be changed by any general law. So you've got to read what we did yesterday with what we're trying to do today. My opinion is, my personal opinion is, that I'm tired of local groups who derive most of their income from the state coming here and trying to pull the wool over your eyes, and tell you, "Look, let us run our own show; don't tell us what we can do, you the people of the State of Louisiana." I do not believe in the supremacy of the smallest town in this state. I believe in the supremacy of the legislature which is the body of all the people of this state, and I'm not going to ever vote for any rule or constitutional amendment that protects and allows these people to run the show as they want, and at the same time make me pay taxes to take of their problems. I'll yield to questions.

Mr. Jenkins: Mr. Roy, you noticed too under the committee proposal the people don't have a right to initiate any changes in the home rule charter. Under the committee proposal, fifteen percent of the people can partition, and then the local governing authority has to have a charter committee to look at it.

Mr. Roy: Thank you.

Mr. Jenkins: I believe that one knows what that charter committee will come up with; whereas the amendment allows the people to initiate a specific amendment of a change in the charter. So this leaves it with the people, rather than with a lot of local ruling bodies and committees.

Mr. Roy: I agree with you, Mr. Jenkins, and I think that's the point that the committee has made.

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that in 1948, he decided he'd support his friend, Sam Jones, for governor, and you know what happened in that race. Governor Earl Long in the second primary of that race upset the apple cart, and he carried the city of New Orleans and with him on his coattail he carried many legislators that were supported by that old regular faction in the city of New Orleans, and what happened after that? After the governor took over, and after legislators took their seats in power, they then began to do what I'm fearful can happen to many cities in this state. This is what happened, and you can check with the delegates from the New Orleans area who know this history. I was alive at that time. They took the power they had, yes, that newly... great power they had, and they changed the charter of the city of New Orleans entirely without one single vote of the people. This is what happened. Check the records, with not one single vote of the people they changed the structure and power of the city of New Orleans. I don't want to see this happen in the years to come. We are writing a constitution that will be stable, a constitution that will serve all the people, and don't leave it to the whims of the legislature as we go along. I urge you to defeat this amendment, and stick with the committee proposal. Thank you.

Questions

Mrs. Warren Mr. Chatelain, I didn't... I wanted to ask Mr. Kean this question because he made me think about this. He said he didn't know what the word "inconsistent with the provisions of this constitution"... Now I'm under the opinion that once this constitution is finished... I want you to listen, Mr. Chatelain. Once this constitution is finished won't all of us know the provisions in it. Then if we look in it and see what we have written in this constitution, won't we know whether anything that they do in our charters are inconsistent with this constitution?

Mr. Chatelain Mr. [Mrs.] Warren, the issue here, as we speak to this amendment...

Mrs. Warren Mr. Chatelain, I'm not talking about the amendment; I'm talking about this particular thing, because this is what concerns me. Mr. Kean said he didn't understand what "inconsistent meant now with this constitution. Now, what I'm trying to find out is, won't we know what is in the constitution once it's written for 1973, what's in it. If we know what's in it, then won't we be able to look at our charters and compare it with the constitution, the finished product this year, as to know whether it's going to be inconsistent. This is all I want to know.

Mr. Chatelain Well, Mrs. Warren, I appreciate this question, and I think it's very well thought out. I say to you that we are a hundred and thirty-two delegates here assembled. This hundred and thirty-two delegates is speaking to the voice of the people of Louisiana, but we have to refer our work, our labors, to 3.6 million people who sometime in the year 1974 will make that great decision as to whether or not they want to change the 1921 Constitution and accept a new model, 1974. I think you've got a good point.

Mrs. Warren Well, this is what I'm saying. Once it is finished, and it has been accepted then, won't we be able to know what's in it?

Mr. Chatelain You certainly will, yes ma'am.

Mrs. Warren All right. Thank you.

Mr. De Blieux Mr. Chatelain, I'm kind of getting a little bit confused about this amendment, sir. I need for you to answer a few questions for me. Can you tell me what, in this particular amendment would directly affect the city of New Orleans? How you made reference to the city of New Orleans? How can the legislature change the charter of New

Orleans as a result of this amendment?

Mr. Chatelain Well, Senator Rayburn, I think you know better than I do how the...

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, hopefully not to be redundant, merely to set forth the issue to you, I would like to state the following: I think this is the issue. The Roemer amendment leaves out a very essential clause, that is, "the legislature shall not pass any law which will affect the structure and organization of the home rule unit." He said very candidly when I questioned him that that means the legislature can then pass such a law affecting the structure and organization of the unit. This is the issue. Do you think the legislature should be able to do this or shouldn't? This is not trying to pull any wool over the eyes; it is stating the issue right directly. I would like to also quote from people who have studied this for many years, from people who are recognized experts. I think we all, somehow, have become self-appointed experts in fields without really giving it much thought. Now, Dean Herbert [Hebert], Dean of the L. S. U. Law School who is a pretty eminent legal scholar, I think, says and if you have read your "Focus on CC '73," you will see that when home rule is discussed and local government, the concept basically, as styled by the committee, is endorsed by the experts in the field, not self-appointed, self-ordained experts, but experts who have spent a lifetime studying the matter, which I think you should give some consideration. Here's what Dean Herbert [Hebert] says after discussing the La Fleur case and after commenting favorably about the rule on the La Fleur case. Clearly then, the adoption of home rule charters should go a long way towards eliminating the practice of the legislature granting special dispensations from the state legislature, leaving the bill to be paid by local government. Now, that's the issue. You make up your minds. Thank you.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I rise and I urge you to approve the amendment that is before you or a similar amendment or anything other than the committee proposal. I'll tell you why. Mr. Kean got up here and he told you what he conceived the issue to be. I don't agree with him. The question is very simple, as I told you, I believe it was yesterday. Do you want to write a constitution for the State of Louisiana and the people of Louisiana? Or do you want to write a constitution that will create and establish several thousand completely independent and autonomous states within the State of Louisiana, because if you adopt this committee proposal, you might as well go back and repeal the articles of the legislature, because there won't be any legislature. Now let me tell you exactly what the issue is. Do you realize that under this committee proposal, as it is drawn, that once a home rule charter is adopted, or with respect to one that is already in existence, there is no limit—I tell you, no limit of any practical significance, that cannot be done by local government. The only limitation on them is that they can't incur debts payable from ad valorem taxes that mature more than forty years from the time the debt was incurred. They can't define and punish a felony, or they can't—and heaven knows what this means—enact private ordinances. I guess that means they can't sit down and enact an ordinance and say that it applies only to Joe Blow, or civil ordinances governing civil relationships—that means they can't grant divorces. But, anything else under God's green earth they can do without a vote of the people. They can levy an income tax on people, whether they live in that municipality or whether they live in some other municipality, as long as they come there and earn some income. They can levy sales taxes without limitation. They can levy an estate tax, an inheritance tax, a transaction

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Bar-tax, tax, tax, tax, tax, tax, a cigarette tax--any kind of tax that the mind of man can conceive, without a vote of the people and without any limitations, if it's once given this magical home rule charter. Now, this is the issue that the legislature has on any subject under the sun without any restriction or control by the legislature. Now, if that's what you want, then just vote for this committee proposal. You give us as well go back home and do away with the legislature. Now, let me tell you a little bit of something about these home rule charters. I have lived under one for twenty-four years. We adopted one in this parish--I'll put it this way--one of the best ones in the country. It's been adopted--you know how many times it's been amended since then? I can count them on the fingers of one hand. Time and time again legally, properly submitted calls for the amendment of that charter have come in and been put off. So, if you think that what you are doing is giving away all of this power to the people, you are sadly mistaken. You are creating, without limitation, a thousand or more completely independent, autonomous local political entities that are going to be run by the local politicians.

Further Discussion

charters, the method whereby they are going to amend their charter in spite of the fact that all of these charters were adopted by the people of that area. Let's quit talking about the elected officials. These home rule charters are home rule charters only because the people, the electors, decided they wanted that home rule charter. I, therefore, strongly urge you to defeat this bad, bad, bad amendment.

Questions

time to talk about all of them. But take for instance you said, "next scheduled election held in the local governmental subdivision or subdivisions not less than sixty days after its passage." You said "What if there is no election within sixty days?" Now that isn't what it says, it says "not less than sixty days." If we said "within," we would mean less than sixty days, but it says "not less than sixty days," doesn't it?

Mr. Perez Well, Mr. Jenkins, if you read the whole sentence and not just that clause, I think you'll get the meaning of it.

Mr. Jenkins It says "it has to be submitted at an election not less than sixty days." In other words, it has to be longer than sixty days, doesn't it, not within sixty days?

Mr. Perez I disagree with you on interpretation.

Mr. De Blieux: Mr. Perez, that was one of the questions I wanted to ask you because that's... this clear meaning of the English language is that the legislature is not supposed to change parish boundaries until the time that it cannot be before, so as to give the people sufficient time to be informed. Now the next question that I wanted to ask you about your illustration, and I think that you are illustrating it, is that the legislature is the only one that has the power to change parish boundaries and therefore, your illustration about the city of New Orleans annexing and changing a territory is out of line. Isn't that correct?

Mr. Perez No, sir. The legislature does not have the right to change parish boundary lines, unless you go to the vote of the people. I've answered the question.

Mr. Altiero: I am an airman, fellow delegates. I rise to oppose the amendment as offered. I'll state the very short reasons why I object to it. I don't want my drawbacks are on it. In the first place, the amendment or repeal shall be subject to the approval of the electors of the State in the next election. I don't know what would happen in a referendum. I don't know whether or not the electors would decide that they want the form of government. I don't know whether or not the other two-thirds reside in the same place. I don't know whether or not one city.

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put in enough work here and certainly have tried to come up with a good proposal. On page 4, lines 10 through 12, they say "The electors in each affected local governmental subdivision who vote in an election held for that purpose vote in favor thereof." That language were incorporated in this amendment. But then I could see possibly going along with it. But if you don't allow those people in those particular municipalities to decide if they want to give up their municipalities, then I think we are doing the wrong thing here.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I'm distressed at the criticism of this amendment because, I think it's one of the first real good amendments we have had. Let's start from the beginning: "Except as may be inconsistent with the provisions of this constitution." Now some of the people have come up here and criticized that. Well, that's not true. In the other article that one right before it, the other section. No one raised these dire predictions then. These home rule charters should not be inconsistent with this constitution, and I think that's pretty obvious. Then it's been said that this amendment changes the amendatory process in existing home rule charters. Well, that's not true. In the previous section we provided that the amendment process in existing home rule charters would be as provided in those charters. This isn't going to change that. I think we are talking about one thing. We are talking about a gigantic power grab by local government. We are talking about from a legal standpoint, something much more serious and more permanent. We're talking about the creation of a third level of sovereignty in this country, a third level. We already have two, the federal government, and we have the state government. But local governments are mere creatures of the state government, they are not sovereign now. Once a grant of sovereignty is made, they cannot take it away. The states created the federal government, it gave it sovereignty and they can't take that away. If we once yield sovereignty to the local governments, we'll never be able to take that away. We are going to literally have thousands of little kingdoms or republics or dictatorships depending on how they take a course in these local areas. Well, what are we talking about, too. We are talking about more control, more government, more regulation because even though the federal government is regulating and controlling to a great extent and the state government is doing that, too. What we are talking about now is a duplication, an extension of government control on the local level in every parish and in every municipality in this state. Now, who wants that? Well, let me tell you what it's not the state officials that want it, on the one hand; it's not the local people on the other hand. I don't hear local people coming around saying "Our local government just doesn't have enough power." There's one group that wants it, the local government officials; that's the only group that wants it. Now, if you look down on line 28 and it's been mentioned many times today, we are granting here to local governments "all powers not denied by the legislature of this constitution." That statement right there is difficult to really comprehend because it's so broad. It means literally, particularly if you read it in connection with Section 9, that local governments for one thing could license in any profession—the legal profession, medical profession, social workers, occupational therapist—you name it, they can regulate them. They can set all sorts of rules and regulations on commercial and labor transactions—working conditions, hours, wages, terms of contracts—on and on and on unless it specifically prohibits it. Local government could go into any retail business any manufacturing business, any industry because there is nothing now in the state or constitutional statutes to prohibit it—just take it on and on and on, local government could do anything it would have residual power unless it's specifically denied. I'll tell you what's happening in a parish like East Baton Rouge

where we have a home rule charter, probably the parish has too much authority now. They are passing every manner of regulation involving people's private lives, that the people aren't interested in, the people don't want. It's more in the form of harassment legislation. With the authority they already have, they are passing these cat ordinances—you know if you're going to let your cat run loose you have to have him on a chain, bicycle licensure laws. They are regulating the child care centers throughout the community. They've put limits on the number of taxi cabs that can exist. Now, they are contemplating putting limits on the number of alcoholic sales centers, bars, lounges. All of that within their present authority, by the way, not enough. They want any authority not specifically denied to them. Well, I think they've got plenty of authority right now, probably too much right now. There is no need to extend this authority to everything under the sun. Now one other thing about this committee proposal, with regard to the fifteen percent requirement on signatures, notice what that says, if you have fifteen percent of the electors who sign a petition the local governing authority has to appoint a commission to draw up the new charter and then that charter is submitted to the people. But, there is no means provided in the committee proposal for the local people to control their own destiny. They cannot propose a fifteen percent a charter amendment. Like in 1948, I believe it was, East Baton Rouge Parish had adopted its home rule charter by, I think, about a hundred vote majority and a very small turnout—for twenty-five years we have been living under it. People in that circumstance need a way they can have a petition to go forward and they can have a referendum. That should be true not only here but in any locality and no charter should deny that right. I don't think. The good thing about this amendment it allows ten percent of the people to petition for a specific proposed amendment. That amendment goes to the polls and if the people want to make that change they will. Or you say "Oh, the people get to elect the local officials and they can't elect and sell them as a single issue before them when they elect somebody. Oh, they can adopt a new charter, that's true but they don't get to make the proposal of what a new charter will be, a commission will make that proposal and they can't control it. The people will make a decision about any change in their form of government, they ought to be allowed to and this amendment gives them that right."

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, I really presume that there are people that these few remarks are addressed to about the taxes on income, taxes not yet quite made up their minds. There may not be many. What isn't being said from this microphone yet is what are the two opposing legal and philosophical questions. Under a constitution of any state, municipalities are dealt with in one of two differing ways. A municipality (1) can be the government closest to closest to the people and it specifically denied to that community by the state's constitution or (2) they can as Mr. Jenkins put it, they are creatures of the legislature and they can have under the constitution just so much power as the legislature gives them to do. They are two opposing points of view. Now, Mr. Avant got up here and said you're going to have taxes on income, taxes on transactions and taxes on everything you can imagine. Well, by...., Mr. Avant, those people run for election in that city every four years and if they are stupid enough to pile on their people taxes that are not warranted, then their chances for success in reelection aren't very good. That's not the problem. We are talking about in this section of this constitution, what shall a city be prepared to do for its people, not to them. What powers can a city have as against, for instance, the legislature? I don't want to argue about a section that's coming up, but in this committee proposal parts of which I do not agree with, the legislature can pass a pay increase for certain municipal employees and

money to pay it with, and that's not right. They left a single set of exceptions which we'll need in Section 16 when we get there. But what we are talking about now is what kind of home rule do you like with the cities of this state to have? It's a simple question. Do you want city government, or is the government closest to the people the one you want? Do you want the people to be able to do what the people want them to do, charges them with doing and permit them to do, so long as it isn't denied in the constitution? If that's how you want it, then vote for the committee proposal. If you want your cities simply to be the creature of the legislature bound down by the legislature, then simply vote for the Roemer amendment. It's just a simple question. What kind of cities do you want? If you want to run your business in your town as your people will permit it to be run, then you stick mostly with the committee proposal. If you want the legislature constantly calling the shots, then you vote for the Roemer amendment. You've got one solid set of questions, you're either going to go one way, or you hear people talking about the Fordham plan, the Fordham plan simply says the cities can do those things not denied to them. You are going to hear about the Dillon rule. The Dillon rule said you don't do a darn thing in your town unless the legislature says you can do it. The Roemer amendment is Dillon. The committee proposal is Fordham. What kind of city government do you want under home rule charters? The choice is that you let the delegates to the convention, you do a crunch point, and you're going to have to decide [decide].

Closing

Mr. **Boomer** -- Mr. Chairman and fellow delegates, I rise to close in support of my amendment. An amendment which provides for home rule charters for all local, political subdivisions [subdivisions] who desire to have one. An amendment which I think is the only realistic way to solve the problems of the people of this nation. I'll tell you what life is. Some city folks and some country folks all of us in the same boat hopefully heading the same place. We've had a parade to this podium from members of the Local and Parochial Committee, they either couldn't get up there to read the amendment, or they desire to misinterpret it. Point after point has been so misinterpreted. Example: One member of the committee got up here and tried to tell you about the sixty day rule and if there was no election within sixty days regularly scheduled then we would have an amendment. It was clearly misread, clearly misread and misinterpreted. It says "not less than sixty days." You have to wait sixty days for the information of our people, the education of our people. Now, Lord we need that. Don't you think so? There are those that don't get up here and said we'll ten percent rule might not be some of the charters, but it will go, it says "at least ten percent." If a home rule charter has fifteen percent in it now, this amendment would not affect that. Point after point has either been deliberately or either from misinformation, been misinterpreted. Now the point is clearly to let the people be able to be able to do what they want to control everything within their boundaries. We've already in this constitution passed a provision where the municipalities could willy-nilly take over the utility systems within their territorial boundaries. Now, we've got a real serious problem. The cities of this nation and the cities of this state--go to New Orleans or New York or Chicago or I.A.--they want to be autonomous; they want to stand alone. But, inevitably they need help, inevitably they overrun with slums and with crimes and lack of education and dirty streets and dirty air and where do they go, where do they go to get help to correct those evils. I'll tell you where

the city, but the people of the country and the people of the other cities. They go to the legislature, so should they go to the legislature. That is the crux of the matter. I give them, we give them the amendment, the right to give the people a rule charter. We do not give them blanket autonomy. I suggest to you that we should not give them blanket autonomy. It's a two way street. They want all the power. They want all the control. They want all the glory. But when it comes down to pay the bills, they need to go to the people. They need to go to the box, where do they go? They come to me and you. I live on that farm twelve miles from any city, twelve miles from any city. But my legislator, who represents twenty-one hundred people in his largest city, has to deal with these problems. He has to find the money. He has to find the money. He needs the purse strings of the state. We're not going to change that. The money is not in the city, it cannot be there. What are they going to do to get their money? They are going to tax their people out of existence, how else can they do it? Or, and that's the other case, if they are not, if it's a rich parish and we have a few, if it's a rich city and we have a few, then yes they want autonomy. They want no control whatsoever because they aren't worried about money. But those of you who come from the poor area of this state, like I do, those of you who come from the poor area of this state, you would not be sucked in by those that want to stand on their own bottom--the two or three that can--because they are the only ones that can. Now, that's the issue here. I think it's a clear one. I have tried not to represent in that line. I have tried to represent the whole state. Do we not have his kind of checks and balances upon which the greats of this country was built? Do we want to continue that tradition, or do we want to allow sixty, seventy, eighty or hundred autonomous governmental bodies in this state connected by a ribbon which is a common state? I think this is a great state and is one state. I would like to continue it that way.

Mr. Poynter Amendment No. 1 [by Mr. J. and Mr. Bergeron]. On page 4, line 1, im after the word "than" and before the word delete the word "fifteen" and insert in 1

Explanation

Mr. J. Jackson: Ladies and gentlemen of the convention, the committee proposal as written has the figure fifteen percent of the electors. I would like to bring to your attention that presently the charter of the city of New Orleans, it says "ten thousand persons," and that in Shreveport, as I understand it, it says "ten percent." What we've attempted to do is to allow--and our concerns were about the fact that in some parts of the state that the voting percentage at election time is sometime between thirty and forty percent and that a fifteen percent figure for instance in the City of New Orleans was raised that from ten thousand to maybe twenty-five hundred or so.

I think that's a very meaningful address and referendum before the governments. This does not necessarily mean that this would be the final thing that we would have to say, because if you look at the constitution, there are several places where amendments can be made, and one of my reservations about this Section B in which you are going to have a situation that as many people

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talking about necessarily racial minority but a minority of the people has not at least posed the question. I think that the figure as represented by the committee is an arbitrary figure because we originally started off at twenty-five then we got down to fifteen. The only reason for fifteen is because basically it's arbitrary. I would ask for your support of this amendment.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, the question of what percentage of votes was needed was discussed in the committee, there were suggestions anywhere from twenty-five percent down to ten percent. One of the problems that bothered the committee was the cost of calling these elections that there wasn't a fair chance that such a proposal may be passed if you only have say ten percent. However, we have no strong feeling on the matter one way or the other, we just leave it to the pleasure of the convention as to what you figure might be the right percentage in order to be able to call for such an election.

[Amendment withdrawn without objection.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Bergeron and Mr. J. Jackson] is just like the amendment I just read: "Page 4, line 1, immediately after the word 'than' and before the word 'percent' delete the word 'fifteen' and insert in lieu thereof 'ten'."

Amendment No. 2, On page 4, line 2, immediately after the word "electors" and before the word "who" delete the comma "," and insert in lieu thereof the following: "or ten thousand electors, which ever is the lesser,".

Explanation

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I thought when I originally got up here I was explaining the revised amendment. As I mentioned, New Orleans has presently ten thousand or it requires ten thousand voters, to initiate a petition to the city council to propose a charter... a charter amendment and the only thing that we have attempted to do here as I previously mentioned is to: one, provide for a situation whereby our charter already says ten thousand and two for Shreveport which is that ten percent, and basically there's no difference from the manner in which I first explained it to you. I'll stand up here in case there are any reservations or questions that people you know may have about this amendment.

Questions

Ms. Zervigon Representative Jackson, in the areas where they have got ten thousand in the charter like ten thousand have there been a whole flood of petitions to put amendments on the ballots and new charter on the ballot?

Mr. J. Jackson Now I only can recall of one I know, Mary, particularly in the city of New Orleans. Only one. There's no major flood... or contrary to the reservation I would think some delegates have about floods and people proposing amendments to the charter.

Ms. Zervigon In that case that you speak of, if I remember correctly, wasn't that a charter that was circulated, got ten thousand names on it in the end, but never was submitted to the council to put it on the ballot, and in the end the council went ahead and put something else on the ballot that was very similar, isn't that correct?

Mr. J. Jackson That's correct, particularly in the city of New Orleans, and even on the point that generally it's my... my basic feeling is that by posing an amendment doesn't necessarily [necessarily] means that that amendment is going to be--you know

the final resolution. It just seems to me that we ought to offer people ingress into government by providing, but not putting such a high percentage.

Ms. Zervigon So this is in existence now, but has not been irresponsibly used, is that correct?

Mr. J. Jackson Right. If the committee proposal maintains--in fact it's going to jump from ten thousand in New Orleans to twenty-five thousand and from ten percent in Shreveport to twenty to... an additional five percent and I don't know what that means in terms of the amount of voters that they have there.

Mr. Perez As far as the committee is concerned, the remarks I made previously apply to this particular amendment.

[From 108-11, 108-12, 108-13, 108-14, 108-15, 108-16, 108-17, 108-18, 108-19, 108-20, 108-21, 108-22, 108-23, 108-24, 108-25, 108-26, 108-27, 108-28, 108-29, 108-30, 108-31, 108-32, 108-33, 108-34, 108-35, 108-36, 108-37, 108-38, 108-39, 108-40, 108-41, 108-42, 108-43, 108-44, 108-45, 108-46, 108-47, 108-48, 108-49, 108-50, 108-51, 108-52, 108-53, 108-54, 108-55, 108-56, 108-57, 108-58, 108-59, 108-60, 108-61, 108-62, 108-63, 108-64, 108-65, 108-66, 108-67, 108-68, 108-69, 108-70, 108-71, 108-72, 108-73, 108-74, 108-75, 108-76, 108-77, 108-78, 108-79, 108-80, 108-81, 108-82, 108-83, 108-84, 108-85, 108-86, 108-87, 108-88, 108-89, 108-90, 108-91, 108-92, 108-93, 108-94, 108-95, 108-96, 108-97, 108-98, 108-99, 108-100, 108-101, 108-102, 108-103, 108-104, 108-105, 108-106, 108-107, 108-108, 108-109, 108-110, 108-111, 108-112, 108-113, 108-114, 108-115, 108-116, 108-117, 108-118, 108-119, 108-120, 108-121, 108-122, 108-123, 108-124, 108-125, 108-126, 108-127, 108-128, 108-129, 108-130, 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Amendment

Mr. Poynter Have one amendment to Paragraph A offered by Delegate Gravel.

Amendment No. 1. On page 3, line 23, after the punctuation and letter "(A)" delete the word "Any" and insert in lieu thereof the following: "Subject to and not inconsistent with the provision of this constitution, any"

Explanation

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, as all of you know, Section 8 deals with home rule charters which in the main have to do with those charters that are going to be adopted in the future. We already have provided in Section 7 that the provisions of this constitution with respect to even existing charters are paramount, and that there can't be anything done in those cities that presently have charters that are in... that is it would be in conflict with the provisions of this constitution. The purpose of this amendment, and it's extremely important, is to make sure that no home rule charter in the future will have any provision that has such efficacy that it can override any provision in the constitution that we are confecting at this time. What the amendment then will do is to provide at the very outset that subject to and not inconsistent with the provisions of this constitution a local government charter can be adopted as otherwise herein prescribed. I can't emphasize too much how important I think it is that we engraft upon any such concept with respect to future home rule charters the requirement that nothing in such charter, nothing in any future amendment to any existing charter, shall be in conflict with any provision that's in this constitution. Now, Mr. Chairman, I urge the adoption of this amendment.

Questions

Mr. O'Neill Mr. Gravel, isn't this amendment necessary to make sure that a home rule charter won't contradict, say any provision adopted in the Bill of Rights, for instance, the right to property?

Mr. Gravel Correct, or any other provision of the constitution that we either have adopted or that we may adopt. For example if you didn't have this kind of provision it might very well be argued that a home rule charter could provide, in the event this convention decides the people are going to have a homestead exemption under the constitution, that this will not be a homestead exemption accorded to the citizens in the particular locality affected by such future charter. That's correct, Mr. O'Neill.

Mr. Kean Mr. Gravel, do I understand your explanation correctly to mean that if there is some other affirmative prohibition or grant in the constitu-

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tion, that the home rule charter which would conflict with that would be inconsistent with it, would not prevail?

very clearly that no provision of any home rule

provisions of this constitution. That this constitution in its provisions is paramount that any conflict between any of its provisions and those of any home rule charter will have to be construed as meaning that the provisions of this constitution shall prevail. That's what it's intended to do and I think that's what it does by its terms.

Mr. Kean Well, let me ask you this further question, Mr. Gravel. Suppose a home rule charter was drafted and adopted. If it was not inconsistent with the provisions of the constitution and the legislature then adopted a law which would be inconsistent with what the charter provided, would the legislative law prevail over the charter provisions?

Mr. Gravel Insofar as this particular section and this particular provision is concerned, there is nothing said with regard to what the legislature may or may not do by...insofar as putting any restraint on the charter. This has nothing to do, Mr. Kean, ladies and gentlemen of the convention, nothing to do with legislative action whatsoever and let's don't confuse it with that. This says precisely, succinctly and simply that you cannot have in any future home rule charter any provision, that is any valid provision, that conflicts with a provision of this constitution. It has nothing to do with any legislative act. We're going to get to that later on.

Mr. Kean I simply wanted to make that abundantly clear that's the reason I asked the question.

Mr. Gravel Correct, Mr. Kean.

Mr. Conroy Mr. Gravel, yesterday on our amendment we began the section with the simple phrase "except as may be inconsistent with the provisions of this constitution." The prior amendment also used that same phraseology, but yours goes further and says "subject to and not inconsistent with the provisions of this constitution." Are you concerned or do you intend to broaden what we did yesterday, in this section?

Mr. Gravel No. I think this is just another way of saying what we intended and makes it perhaps a little bit clearer as to the supremacy of this... of the provision of this constitution and I do think we're only there talking about a Style and Drafting problem. My intention by this amendment, so there's no question about it, Mr. Conroy, and I appreciate your question, is that no home rule charter can provide with respect to anything contrary to any provision in the constitution.

Our intent yesterday with the Section 7 and I wanted to make sure this was still your same intent. I would have been...felt a lot more comfortable if you had used exactly the same phrase, because it seems to me that somebody would tend to interpret the two different phrases differently.

Mr. Gravel I think we are going to have to end up with one phrase, whether it be this one or the one that was utilized in the previous section one phrase

the paragraph of the article that talks about the method for drawing the charter?

at the very beginning because at the very outset we're granting the authority of local government subdivisions to draft, adopt or amend this sort of government.

that any local government subdivision may adopt a charter in accordance with the provisions of this section, which makes it a rather limited area within which a local government can act. I want it made abundantly clear at the outset that with respect to the adoption of any charter, with respect to the amendment of any charter, nothing can be done by local government that will conflict with the specific provisions of this constitution. I can't say it or explain it any differently than that.

Discussion

Mr. Wall Mr. Chairman, and fellow delegates. I think this particular amendment is a good amendment and is a necessary amendment. It would be useless for us to continue in this conventional deliberation as to what should be constitutional and what not... what should not be constitutional and still leave it to where the people could be governed outside of the instrument that we're working on. So, if there's something that needs to be done and provisions need to be taken care of it needs to be done in the instrument and not laws that were that a particular government can operate outside of this deliberation. So, I think that this amendment should be adopted if you believe in the work that we are doing.

Second

Per Privilege

Miss Perkins Mr. Chairman, ladies and gentlemen of the convention, it has been said that there is one thing that never goes out of style, and that is the feminine woman. Today, victory is a dual respect. Billie Jean beat Bobby demonstrating that superiority, physically and especially mentally when she psych'd her opponent out, of feminine sex. Bobby Riggs has come to this convention disguised as Dr. Gerald Weiss. To each of the ladies of this convention, he has delivered a beautiful bouquet of sweetheart roses with some skiniment that, "What a convention!" Why don't we remember that there are many who talk about a sphere as though it has a limit? But let me assure you that there's not a place on earth or in the sky there is not a task to mankind given; there's a blessing or a woe; there's not a whisper, you see, no; there's not a life, a death or cruelty, there's not a feather's weight worth without a woman in it. You know, this is some convention. You have demonstrated your confidence in us and in our ability. Yet you congratulate us in the nicest manner by recognizing our femininity. We thank you for the flowers and Dr. Weiss's name has now changed to "Dr. Sugar Daddy." Thank you.

rights.

lieu thereof the word "authorize"

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little difficulty finding it. It's very simple. On line 28 it deletes the words "not denied" and inserts in lieu thereof the word, "authorized". There are, of course, in this constitution and in the statutes certain express grants of authority to local governments regarding their powers and their functions. That has always been the theory of local government; that local government can do anything that's authorized by general law or by the constitution of the state. The real significance of this section the way it's written is that it would change that whole theory, would change our theory of local government. I believe it would grant what amounts to sovereignty. It would amount to an alienation of sovereignty from the State of Louisiana to the localities. Unless we change these words, "not denied", we are really going to put the state legislature in an impossible position. The legislature will be put in the position of having to scurry around the state at every session, putting out brush fires, trying to correct things which have happened in community after community. Let me give some examples.

If you read the words, "not denied", and you read Part (B) of Section 9, and that section says, "Any local governmental subdivision may exercise any power or function concurrently with the state, returning to its government and affairs to the extent that the legislature, by general law, does not specifically limit the exercise of any power or any such power or the performance of any such duty." When you read those things together you see that it's clear that the legislature has to come along and specifically prohibit a certain thing in order to stop a local government from doing it. Now the example that was used before, and just because it's familiar I'll use it again. The example shows the point very well, a milk price fixing. The legislature has set-up the milk commission to regulate milk prices. At no time has it said that that regulation is exclusive, not at all. It simply said that they were regulated. Under this theory, though, that the committee proposes, each municipality and each parish could regulate up its own standards, even higher in quality or lower in price, higher in price, than the state has done.

Take again the subject of minimum wages, working conditions, your OSHA(OSHA)-type standards. Every manner or regulation and control could be placed upon commerce by these local governments. Now here's what would happen in practice. A municipality is going to enact this sort of regulation and in the next session of the legislature we are going to be up at the state capitol having a specific law to specifically prohibit that sort of regulation or that sort of ordinance. I can imagine that every session we are going to have literally hundreds of bills introduced to try to undo the obnoxious, officious regulations that would be passed by local governments under this provision. Local governments historically, it is a fact, exist only because they are authorized by the legislature. There are creatures of the state government. They have no independent existence. Just as the states created the federal government, the states created the local governments and their authority cannot, should not extend beyond their authorized authority under state law and under the constitution. What we are doing, if we adopt the committee proposal without this change, I fear we are really going to make this constitution unacceptable to a large, large number of people. Look at the limitations on local government in this section. Other than the provisions of this constitution which are applicable, such as the Bill of Rights, one of the few limitations is in this Section 12. It says three things local government can't do. It can't incur debt, payable from ad valorem tax receipts maturing more than forty years from the time incurred. Number 2, they can't define and provide for the punishment of a felony. Number 3, they can't enact private or civil ordinances governing civil relationships. Other than those things, and the few other limitations in this constitution, and the few things that might be specifically prohibited by state law, they could do anything.

One of the important things of state government is that it allows conformity in the conduct of normal, personal activities within a state area. One of the inconveniences in our whole national system is that from state to state these regulations and laws vary. But those differences in regulations and laws from state to state are tolerable because of the benefits of a federal system and the fact that it allows diversity. But if we are to come along and allow these laws and regulations to vary from parish to parish, from municipality to municipality, we would have a completely unworkable system. It would make...it would make the economic life of this state grind to a halt. Now many people have said that the principle here is local government, home rule versus centralized authority. That's not the case at all. The issue we are talking about here is more government versus keeping things about like they are. We have too much government already, and let me tell you these localities aren't going to be able to undo any federal regulations. They are not going to be able to undo any state regulations. The only thing these local governments are going to be able to do is put on more regulations, more controls, more interference that all of our citizens are going to have to live with. As said before, this is not something the people are clamoring for at all. The main thing they want with regard to local government is they want to limit the number of constitutional amendments on the ballot. Well, I don't think anyone's proposing anything here that's going to cause them a lot of amendments on the ballot one way or the other. But that's the main extent of the people's interest with regard to local government. They don't want to have to be voting on all these amendments. Well, the amendment that I am proposing would change that at all, won't change that at all. It won't require a lot of amendments. It's going to satisfy the public demand. But it's not going to subject the people to more and more arbitrary and capricious regulations on the local level just as they already face on the state and federal level.

So I urge the adoption of this amendment.

Vice Chairman Casey in the Chair

Questions

Mr. Derbes Mr. Jenkins, in a modern and in particular in an urban society, do you realize, or do you agree, that local governments as distinguished from state governments have a justifiable interest in regulating areas of transportation, sanitation, environmental quality, zoning and the like?

Mr. Jenkins To the extent that they do, Mr. Derbes, I think that the legislature has, and will continue to grant them, authority by general law. I don't think there needs to be any reversed presumption that they can do just anything whether or not it's specifically authorized. And I can tell you thing after thing that the legislature would never authorize that this will allow unless we change this committee section. One example is price fixing, not only milk but of anything. The legislature is not going to allow these localities to come along and set prices. They are not going to do that. But if we pass this particular thing, we are going to make the legislature come back and specifically prohibit one by one each of those sorts of interferences.

Mr. Derbes Are those laws on the books now?

Mr. Jenkins Laws to specifically grant them that authority are not on the book now.

Mr. Derbes Laws that specifically prohibit them that authority are on the books now?

Mr. Jenkins No, not to specifically prohibit them. They are not on the books now in most instances.

Mr. Fog Mr. Jenkins, the reason the laws...they don't do that now is because unless the legislature specifically authorized it, they can't price fix

at local levels. Isn't that true?

prohibiting those things now. But we would need to enact hundreds, perhaps thousands of additional measures to specifically prohibit each of these various things.

Mr. Roy: Do you realize that in the parish of Avoyelles with only about thirty-eight thousand people, there are nine political subdivisions, cities and towns? Did you know that?

Mr. Jenkins: It's, it's quite a lot and there are even more in some other parishes.

Mr. Roy: And if each one of these were allowed to change into a home rule charter, they could pass whatever rules, regulations they wanted. Mr. Duval, I can't see the speaker...you're nice looking, but...they could pass whatever laws they wanted that even the legislature passed which weren't prohibited, and deal with any sort of situation they wanted. Isn't that true?

Mr. Jenkins: That's correct. Of course, I don't object to their having home rule charters, and I don't object to, if they have a charter, doing those things that are authorized by state law by the constitution. The thing I object to is a home rule charter that just allows them to do anything unless specifically prohibited.

Mr. Burson: Mr. Jenkins, are you aware that the police juries in this state at present are permitted to do only those things authorized by law?

Mr. Jenkins: Well, I think that's good, Mr. Burson.

Mr. Burson: So you're in favor, then, of the system established under Louisiana Revised Statutes 33:1236 in which police juries have had to come to the state legislature and ask legislative permission

to cut grass on the side of the highway, and in subdivisions to regulate or prohibit the storing or abandoning of junk automobiles on parish roads and in which they've had to ask legislative permission to enact ordinances about trash burning? That's what you'd like for all home rule units to have to do?

Mr. Jenkins: Mr. Burson, local governing authorities that have come before the legislature asking for those things have had no difficulty getting them at all. But each of those things, in one way or another, involves interfering with an individual citizen's right to, in most cases, his property. Before a local government is allowed to do that thing, they ought to have the specific approval and review by the legislature. The legislature, let me tell you, they are very liberal. More liberal than I'd like to see them in their grants of authority to these local governments. They grant virtually anything.

Mr. Burson: So you think that a home rule unit in short should have to come to the legislature and ask about regulating BB guns, then?

Now, my next question....

control of arms, yes, I think they ought to have a specific authorization. They do have it. There's no problem. They are not going to have to come get it again. There's no problem with that.

gun to be out helping those people who were talking about who defended the ballot box with the cartridge box last week, then.

legislative scheme would establish uniformity. Are

each of the 11 subsections, therefore, except no

fifteen can do another.

Mr. Jenkins: The reason, of course, that that's that way is the fact that in particular excepted areas covered by those particular cause the people of those areas didn't want sort of interference. That's about all the people as you are going to get.

want that interference, wouldn't it be a lot just to leave that decision to the home rule unit in the first place?

Mr. Jenkins: Well, of course, under my amendments, since we changed the words, "not denied", to "authorize", we authorize powers to be granted to them by general law. As long as it's by general law and not by special law, I don't see any problem that.

Mr. Burson: But the point that I was making is, then uniformity is not really the issue, is it? You don't want uniform application....

Mr. Jenkins: Any time you allow home rule charters you're not having complete uniformity, and no one wants complete uniformity. That's not the thing being advocated. The thing being advocated here is that the presumption in our legal system ought to remain as it is, that local governments can do those things which they are authorized to do, not that they will be allowed to do just anything unless there is a specific prohibition against that thing.

Further Discussion

Chairman, fellow delegates, I'm in opposition to the amendment. I really think Mr. Jenkins' position that he's set forth in support of it misses the effect of his amendment from a legal standpoint. I really think we'll have a full discussion of the point that Mr. Jenkins is trying to make with some other amendments that probably be offered. The problem with the

Louisiana law, the only general law that applies to most municipalities is the statutory provision

Act municipality. Now, if you amend the Louisiana Act municipality to a home rule charter, the provisions of this particular act, which are amended by Mr. Jenkins, then the general laws that relate to municipalities. Under the circumstances, you would have an authorized municipality, which would be subject to the general laws that relate to municipalities.

date to the Louisiana Act municipality, which would be subject to the general laws that relate to municipalities. The Louisiana Act municipality, which would be subject to the general laws that relate to municipalities. There are no general laws applicable to home rule

adopted, you would have a home rule unit which could adopt a home rule charter, which would be subject to the general laws that relate to municipalities.

There are no general laws applicable to home rule units. The Louisiana Act municipality, which would be subject to the general laws that relate to municipalities. The Louisiana Act municipality, which would be subject to the general laws that relate to municipalities. The Louisiana Act municipality, which would be subject to the general laws that relate to municipalities.

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overlooks that flaw in the law. We don't have general laws related to home rule municipalities and under the circumstances, if you change this as he proposes, you've got a nothing again. I suggest, under the circumstances, that the amendment should be rejected.

Questions

Mr. Anzalone Mr. Kean, is not this amendment a sequel to that little "merely" amendment that we adopted a few minutes ago that says "subject to and not inconsistent with the provisions of this constitution"?

Mr. Kean Well, this is not even a "merely" amendment.

Mr. Anzalone Mr. Kean, as we now have this article set up, do we not have the same relationship or proposing the same relationships between a municipality and a state that the state has with the federal government?

Mr. Kean That's the way I view it, yes, sir.

Mr. Anzalone Mr. Kean, do you think as a matter of philosophy that the State of Louisiana should be subjected in all cases to congressional will?

Mr. Kean No, sir.

Mr. Anzalone Do you think that in the State of Louisiana all municipalities should be subject to the legislative will?

Mr. Kean No, sir, and I thought I made that abundantly plain in the remarks I've made heretofore to this convention.

Mr. Roy Mr. Kean, don't you think that the legislature in its infinite wisdom would pass a general law allowing all these things, that you are worried about and hasn't it done so in the past, dealt with you all properly?

Mr. Kean Mr. Roy, the legislature in its infinite wisdom might do it. All I'm pointing out is that there's presently nothing on the books which would provide for it.

Mr. Willis A sequence to Mr. Roy's question: Don't you think that if we put it into the constitution, we don't have to worry about wisdom?

Mr. Kean That's correct.

Mrs. Warren Mr. Willis just brought this to my mind. Don't you think if we put everything in the constitution, we don't have to worry about the will of the legislature?

Mr. Kean No, I think that there are many areas in which the legislature retains full authority, as Mrs. Warren, Mr. Willis' point is that if we leave it as the committee has proposed it, then the legislature doesn't have to deal with the minutia of local governmental operations.

Mrs. Warren Don't you think that citizens in a municipality have to be subject to their municipal government or parish government?

Mr. Kean Well, this provides for this home rule charter to occur only upon a vote of the people of that particular subdivision.

[Quorum Call: 101 delegates present and a quorum.]

Further Discussion

Mr. Zervino Thank you, Mr. Acting Chairman. Ladies and gentlemen, I think we ought to get straight from the outset what the subject matter is under consideration. The subject that we are ad-

ressing ourselves to is power, and who should exercise that power. The states have all of the powers which they have not delegated to the Federal Constitution. That's in the Federal Constitution. We're here this year trying to decide how the powers that are reserved to Louisiana will be used within Louisiana. In my opinion, we've done a very good job up to now. We've arranged for a more powerful executive department in the sense that the executive department will be better organized and, therefore, better able to supervise each of the departments and make certain that the policies of the governor are carried out throughout the departments. We've allowed for a lot more powerful legislature because we will meet sixty days a year, elect its own officials, have an automatic veto session, and because a lot of the statutory material that we are cutting out of the constitution, including specific agencies and the powers and functions of those agencies, will be left to the legislature because they will be just that—statutory. Since the legislature will be so powerful, it seems to me that there ought to be another countervailing force. In my mind, that force ought to be local government. We could put all of the statutes back into the constitution the way they were in 1921, or the way the 1921 Constitution has been amended, and leave the power with the people and let the people be the legislature. I say the people have said time and time again that they don't particularly want to exercise that power in that way. They don't want to be called upon to enact statutes. So, the other countervailing force, as I've said before, is going to be local government. Now, let's look at what the committee has done with regard to local governments. We have not said that local governments may counteract the legislature, may override the legislature, may slip around the legislature. The legislature still has complete control over local government. They may not deny local government any power which local government should not use, which is really a power that should be used on a regional basis or which local government has abused. I think, gentlemen, what we have tried to do is to take an unused body of power that has never been taken advantage of by anybody, and give it to somebody—local government. Let me give you an example of the effect of Mr. Jenkins' amendment. It will continue the present situation under which Lafourche Parish passed an ordinance regulating fireworks. In the middle of June of this year, that ordinance was thrown out by the courts on the grounds that Lafourche Parish didn't have the power to enact regulations of fireworks. The people of Lafourche Parish wanted fireworks regulated. If the legislature had passed a uniform statewide law regulating fireworks, that would have been okay with the people of Lafourche Parish. But the legislature, because of many other things, had never seen fit to do so. So, the people of Lafourche Parish would like the opportunity creatively to attack their problems through their local governmental officials. These officials of whom many people have seemed so suspicious are the officials who are closest to the people. The working laborer in Lafourche Parish can much more easily go to police jury meetings or call a police juror on the phone than he can his legislator. In Orleans Parish, for example, the city council meets every Thursday at 10 a.m. in the Council Chambers. It's a rare citizen of the city that does not know that. You want something done or not done by the council of the city of New Orleans, you go, you appear, you are put on the agenda, you speak your mind. Believe me, they are elected officials, they listen. If you have something that you want to require or demand of the legislature, you must wait until the legislature comes into session; then you appear before the legislature. While the legislature is in session, it's difficult to reach your representatives at times because when you call him on the weekend, his phone is busy. Other folks are trying to reach him too. But, ladies and gentlemen, let me make it clear to you one more time, we are not taking anything away from the legislature. The legislature still has complete authority to control any and

one, the local governmental officials who are closest to the people, the power to use that authority. Thank you.

Chairman Henry in the Chair

Further Discussion

Mr. Derbes Mr. Chairman, I guess there is a quorum. My fellow delegates, I rise in strenuous opposition to this amendment. In the words of Louis XIV, whom I recall as being the "Son King of France," and to use what little French I know, Mr. Willis, the words of that great monarch were "l'etat, c'est moi," meaning "the state, it is I." I suggest to you that the force and effect of this amendment creates in the legislature a parallel phrase, "l'etat, c'est nous," or "the state, it is us." I am in favor of the principle of uniformity, but I am also very strongly and strenuously in favor of the principle that permits, without specific permission, therefore, each local individual governmental subdivision to establish reasonable rules and regulations for the conduct of the affairs of its inhabitants, the problems of modern society, and particularly those areas of modern society which represent urban industrial areas, are multitudinous. They involve many considerations regarding the health, safety and welfare of the people. To acquire the individual governmental authority of that area, to ask specific permission of the legislature, to propose reasonable training and standards, and laws to regulate the affairs of its inhabitants seems to me to be anachronistic in this modern day and age. I suggest to you further that the unarticulated major premise of this amendment is that of patronage. It is a legislator's amendment. It is an amendment which will perpetuate a system whereby the legislator may control, preliminarily and peremptorily, any business which may be conducted by the local governmental subdivisions. So, I urge you to give this careful consideration, to reverse this tide that has existed through this state for so many years, to permit local governments to govern themselves, subject, however, to the reasonable provisions of this constitution, the announcements and pronouncements that we have made herein regarding due process of law, equal protection of the laws and private property, Mr. Jenkins --all of which we have enunciated with great clarity and all of which are available to each individual to test the constitutional sanction and the constitutional authorization of the local governmental subdivision to control the affairs of its inhabitants. Give us the opportunity to govern ourselves without having to go before the legislature and first ask permission. I urge you to defeat this amendment.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I don't like to belabor this convention's time by coming up here again, but we've been belabored by amendments which attempt to strip the basic concept of the committee proposal. I'd like to bring to your attention one thing. Mr. Jenkins, who introduced the amendment, happens to be from East Baton Rouge Parish. I'm sure all of you have looked at your constitution and have seen that in Article XIV, Section 3 (A), East Baton Rouge happens to have a clause quite similar to the clause in the committee proposal which has already been ratified by this Constitutional Convention. Several other home rule charter cities, and this type of clause, have this clause. So, I ask you in the name of uniformity,

other parishes which we have ratified don't have to go to the legislature, but everybody else does. Now, that's a little smug, in my opinion. If we want uniformity, allow each parish the opportunity to govern itself. The legislature, in its wisdom, can prohibit those things which, in its wisdom, deems need prohibiting. But, you shouldn't have

to go for every little bitty thing, and that's what make the parishes completely servile. I don't think that's what the people of Louisiana want, and

Mr. Jenkins want to take this clause out of the Baton Rouge Charter? Is that what the people of Baton Rouge want? Do they want to be subject completely to the legislature again? Do they want not to be able to govern themselves? It's in their charter. Now, let's put it right where it is.

Further Discussion

Mr. Wall Mr. Chairman, fellow delegates, to first point out, not that all of you don't know, that I am a member of the legislature, so that makes me speak from that point of view and possibly, I hope not with prejudice, but possibly some prejudice and possibly with a little more knowledge from their point of view. Mr. Kean has been a past...city council for the East Baton Rouge Parish government, so he can speak from that point of view with possibly, I hope not, some prejudice and more knowledge. Mrs. Zervignon, she represents the city of New Orleans, so she can speak, and she works with the city of New Orleans. She can speak with more knowledge from that point of view and I hope not with prejudice. But, I have to bring that out so that we can fully understand this issue. Now, let's remember that historically, what has been said here about the legislature being the source of power for this country is correct. They supposedly gave to the federal government certain rights and privileges and what they didn't give, they reserved it. Then, they were the source of powers for all of your political entities in this state. Under the legislature, they gave general laws as to your parish governments and your sheriffs, etc., except there wasn't general law as to municipalities. Municipalities, practically all of them, got their power by special charter. Now Mr. Kean says there's no general law authorizing as far as municipalities. Well, basically that's correct because they each one, practically all of them, either have a home rule charter or either they got that or whatever charter they have by a special act giving them their rights. There is no general law prohibiting certain things, either, as far as municipalities are concerned. There is going to have to be many laws if we are successful in passing this constitution, there's going to have to be some general laws permitting certain things and prohibiting certain things. That is a necessity, an absolute necessity. So, you see, this idea that they're having to come to the legislature for every little thing, that it is incorrect, that's incorrect. Municipalities don't have to come for every little thing. They got whatever powers that are given to them under their charter. Many times they do have to come for specific authority where they want to extend that authority. They have received that. As far as the fireworks, there's been...they were several bills, passed regulating fireworks, but it was where it was asked for; it was where it was asked for. Now, let me say this. Many things that's been...that different political entities...that they've been requests to the legislature, the legislature couldn't do it without a constitutional amendment. They themselves, because they had what was good at the time. Your sewerage districts, your...some of your levee boards, just political entity after political entity, the people that was in power at that par-

and they wanted to embed it in the

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there are going to be some general laws passed about many issues. But where Mr. Kean said there's no general laws, I explain to you it's because they got special by charter. But there's no general laws prohibiting, either. So, this is a good amendment and I ask you to support this amendment. Thank you.

Further Discussion

Mr. Nunez Mr. Chairman and gentlemen of the convention, ladies and gentlemen of the convention, so you won't believe that all legislators are out for a power grab over local government. I'd like to say that I rise in opposition to this amendment. Let me give you some reasons why because there's been a lot been said about the legislature in performing their duty. I don't think this article has one thing to do with the legislature. I think very simply if you want to give meaningful home rule to the police juries, and I'm going to address myself to you gentlemen and ladies who represent police juries out there because enough has been said about the cities. I thought Mr. Roemer's close directed his pitch strictly to the cities. Let's talk about the police juries who want to go into meaningful home rule. It's been said up here that we'd have to pass hundreds and hundreds of laws prohibiting them from doing certain things. I submit to you or suggest to you that it's exactly the opposite. Since 1921, since 1921 we have been passing each session, hundreds and hundreds of laws permitting them to do things, permitting them. Mr. Roy was absolutely right in his analysis about how this all came about, but he was wrong in his conclusions that we have to pass all these laws prohibiting. This is the key word in the whole thing. Deny it or not deny it or authorize. If you deny them, if you have to authorize them, you have to come back to the legislature for every one of the little particulars that they need in the parish, for every one of the little things that they would need before we could pass every constitutional amendment. Someone will question me on that and I'll be glad to take the challenge up. But, if you do pass this amendment, you're taking away meaningful home rule from these local governing authorities who want it. Believe me, when you look at the parishes that are growing today and the changing conditions that are accumulating in our various parishes and the amount of laws that they have to come to this legislative body, to the legislature to get, I think that we are ten years behind in granting this power--in granting this authority. Let me tell you, let me tell you. It's going to be utilized, it's going to be utilized just like the revenue-sharing was utilized. You people who represent local government, you people who represent school boards, you people who represent various elements of government, when we adopted revenue-sharing, what happened? We cut it up in so many different ways and then we said you have to come back to the legislature to spend it. Isn't that correct? I'm sure you people who would agree with that. That's correct. But what this amendment does, it puts us right back to the permissive category of local government. As far as I'm concerned, it guts, it guts the home rule charter provision that has been given to you by the committee, more so than any other amendment I've seen, more so than any other amendment, because the whole thrust of the thing is to take us away from the permissive type of local government that we now have. You don't have local government; you have local government by a legislative act. That's what you have, that's what you have. That's what a lot of people want. A lot of people want it, and I'm amazed, particularly amazed at the people who already have their charter embedded in the constitution, embedded in the constitution where we haven't changed it by VII--Article VII protects them--they are the ones who are coming up here, they are the ones who are coming up here and trying to deny the right of the other governing authorities, the other police juries, that might want to change. You're not talking about anybody who has those powers now. You're not talking about a governing authority

that's changed, that has gone into a home rule charter. They have most of these powers, some of them in various degrees. That's another thing you're going to do; you'll have the legislature granting particular powers to certain people that have their charter and those who, if this amendment happens to pass, you'll have to come and grant additional powers or grant additional rules or pass additional laws prohibiting them or not prohibiting them. That's what it's all about. That's what home rule is all about. Shall we not grant the powers to the local governing authorities that they now not have, or shall they have to come back here to the legislature and get those powers, whether it be grass cutting, ambulance service or what have you?

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, since Section 9 was brought into the discussion by Mr. Jenkins of his amendment, I think it's important for you to realize that the units of government in this state right now that operate under his scheme, i.e., the police juries, get their power solely and only from Louisiana Revised Statutes 33:1236. I've got a copy of it here, and I'll make copies for anybody that would like to look at it. I'll tell you what. If you look at this statute and don't tell me that it's the greatest monstrosity you ever saw in your life, then I'll be very surprised. I am the last one to get up here and say anything against the legislature's concern for the problems of local people. But, I'd like to make a point that I haven't heard any other speaker make. Should the legislature have to spend its time, which can easily be spent on matters of statewide concern, fooling with statutory provisions about the regulation of the use of air rifles within a parish, and this is Subsection 37 of that statute I was talking about? Should the legislature have to pass, as they have done again in the police jury statute, something which reads like this: "To regulate the collecting, pickup and transportation of garbage and trash within the parish, but outside incorporated municipalities, and to grant franchises, exclusive or nonexclusive, to garbage and trash collectors provided that an exclusive franchise shall be granted to any person desiring to collect, pick up, dispose and awarding of contracts in accordance with law. The provisions of this paragraph shall not apply to the parishes of Acadia, Vermilion, St. Landry, St. Charles, St. John the Baptist, St. James, St. Tammany, Washington, Ouachita, Ascension, East Feliciana, West Feliciana, Terrebonne, Evangeline, East Baton Rouge, Livingston," and about ten more. But when you get through reading that, you don't know who it does apply to. Wouldn't it make more sense to allow the initiative on garbage and trash collection, for goodness sakes, to rest with the local government and for them to decide whether they want garbage or trash collection outside the city limits, rather than to let the legislature have to spend their valuable time coming in here and saying "Well, let's find out now who all wants garbage and trash collection, and then we're going to except everybody else"? That seems to me to be a backward way of doing things. I certainly would like to echo the sentiments of Senator Nunez that we've got a lot of areas in this state that don't have home rule charters, and probably never will. The ones I come from I doubt seriously ever will have a parish home rule charter. But, let's not prevent them from having one that's at least as good as the ones in existence if they ever decide they want to. Somehow, that doesn't seem to be very fair to me. Thank you.

Questions

Mr. O'Neill Mr. Burson, if this amendment doesn't pass and enter the committee's section, do you honestly believe that the legislature won't be here passing prohibitive laws all the time instead of what we have now, permissive laws? Don't you think that if this article is adopted as it is that the rest of this local government article will be

legislature could come in under Section 9, if it was of mind to, and prohibit police juries from doing anything. But I've got more confidence in the legislature than to believe they would do that. I'm just saying that the initiative for collecting trash ought to rest with the people in the local unit of government.

Mr. Willis: Mr. Burson, how can we have home rule if the rules for government closest to home must come from away from home?

Mr. Burson: I can't figure that out at all, Mr.

Mr. Willis: My next question: Does not this proposal give local government only the power that it needs to discharge its duties and responsibilities?

Mr. Willis: My next question: Isn't it a fact that this committee proposal does not affect any parishwide official like sheriffs, and clerks of courts, and coroners and the like?

Mr. Burson: Section 9 has a specific Subsection (C) which says that "the powers granted in this section shall not be construed to affect the powers and functions of a parish or city school board, the offices of sheriff, clerk of district courts, coroner or assessor."

Mr. Willis: Now, the scuttlebutt is, and I'll put a question to this. The scuttlebutt is that it does affect sheriffs in the sense it will say how many deputies they can have and all that foolishness. Isn't that just, as in nautical talk, scuttlebutt?

Mr. Burson: If there is any doubt in that regard, I will personally cosponsor an amendment to clarify it. That is in no way the intent of Section 9. The intent is simply to put the initiative for regulating BB guns and trash collecting where it belongs — the local

Further Discussion

Mr. J. Jackson: Mr. Chairman, ladies and gentlemen of the convention, I've had, during the occasions while we talked about the articles that we are debating, have had several delegates to ask me what has been my major reservations about this article. I have so stated that it was the same reservations as I have said in the committee. I have also said that there are certain sections of this I disagree. But, I think that if no more than to maybe stop people from coming and asking me that, I think I ought to give you, personally, my viewpoints about what we're talking about. One, we talk about the problem that local governments and parish authorities have had to come to the legislature in the past to get certain permissive legislation to allow them to do certain things. I want to suggest to you that it has been... there's a very simple reason why... not parishwide who did not have home rule... operated either under the Lawton Act or by legislative charter. So, they had no other authority but to go to the legislature no ask for

... yesterday, we

... (C) ...

... (C) ...

... (C) ...

... (C) ...

... were going too far in

... this. You know, I could insist... can go and say to my councilmen... councilmen are going to vote for what I need in my district." Am I... those other six councilmen... of the city are unfair? I want to say that I don't know what's in the charters, but people talk about knowing for a fact that there are... they get the home rule, and... it past to unincorporated districts. The same arguments that... against the legislature, some arguments have been saying it to them... no, we don't want to do it. How far go? We have based this thing on the

Mr. Henry: Wind up your remarks, Mr.

Mr. J. Jackson: The comments... ly say that in a letter from Jefferson Fordman, which every member of the committee has, it said very clearly. I suggest again that it's time to get rid of constitutional limitation on local governing, which I don't disagree, and to leave the regulation of the subject to the legislature.

Mr. Jenkins: Mr. Chairman, del... thing to me has been that in the... people have tried to make it ap... lators are trying to somehow... here. Mr. Derose said, "We a... king." Well you know, in ou... the legislature is the law of... it makes the laws. In our... the local governing b... vions of the state, do... not their function.

... local areas. But they are not... of this state. Now it's been... to give so much power to local... part of the system of checks and... not what it is at all. It is

... alienated

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And let me tell you what happened on that particular piece of legislation. One particular legislator, at the prodding of his local governing authority, wanted firecrackers to be outlawed in his parish. Now what he, or he wanted the local governing authority to be able to outlaw them. We are talking there about common Class C fireworks which have been determined by the Federal Government to be completely harmless. They are innocuous types of things. Now the legislature was willing to go along with this particular representative in his area to allow his local governing authority the local governing authority to make the use of Class C firecrackers illegal. But it was not about to say to the people across the state that Class C harmless firecrackers were going to be illegal in every rural area of the state. It was not willing to do that. Now matters like this, even small matters, which, when we talk about all the matters, we have small matters, large matters, even a small matter like this deals with the rights and privileges of the whole people of this state, all the people. It has to apply to all the people. The legislature simply was not willing to say to all the people they couldn't use Class C fireworks. So, the general bill failed and the particular bill, the individual bill passed. I don't think there is anything wrong with that really. I think the people in the legislature were trying to protect the people of the state because they thought that in that particular instance, fireworks were something that's part of the American way of life; it's something usually good and healthy for kids to have an opportunity to deal with and learn some responsibility with, and so on and so on. What we are talking here, about here, is not home rule. If we were going to have really home rule, and we would allow each locality to make its laws and repeal them, and they had general application in all areas, that would be one thing. What we are talking here to, though, is bigger government. All the localities under this can't pass more controls, more regulations, more interference. They can't repeal anything that the state legislature passes. They can only build on it and make government bigger and further interfere with the individual citizens, their personal property, the taxpayers of the state.

So I urge the passage of this amendment.

[Record vote ordered. Amendment rejected: 49-65. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Gravel], on page 4, line 28, after the word "or" and before the word "this", insert the words, "inconsistent with any provision of".

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this carries into this section the same purpose of the amendment that was adopted that changed line 23, Section 8. Let me make it perfectly clear that this amendment does not in any way affect the provision that says that under a home rule charter, "the local government may exercise any powers or functions not denied to it by general law." But rather than to leave in here the words which in effect would read, "or denied by this constitution," which would mean that we would have to spell out the prohibitions in the constitution. This amendment would say again that "there shall be no provision in the local charter that is inconsistent with the provisions of this constitution." This is to make sure that we continue the same concept that we have already adopted in the previous section, and, also, in Paragraph (A) of this section. It's intended for no other purpose, it has no other effect, and I urge the adoption of this amendment.

Mr. Poynter Mr. Chairman, ladies and gentlemen of the convention, I am not sure what that language

really means. But I don't want to seriously object to it.

Mr. Henry Any further discussion? Is there...

Mr. Perez Is there no serious objection the same as a little objection, so there is objection to the amendment?

Mr. Perez As chairman of the committee, I'm going to support the committee proposal, and I...

Mr. Henry The gentlemen offers amendments to which a little objection is urged.

[Previous Question ordered. Amendment adopted: 78-22. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Dennis]. This one has just now, or is in the process of being distributed.

Amendment No. 1, page 5, at the end of the line, change the period to a comma and add the following: "It ought to be line 1, but All right. Page 5, line 1, at the end of the line, change the period to a comma and add the following:

"except that the legislature may, (it should be "by" instead of "be", I'm sure) general law applicable throughout the state or based upon reasonable classifications of local governmental subdivisions, enact legislation modifying home rule charters if necessary to correct gross inequities or to prevent unreasonable discrimination."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is an attempt to compromise the two schools of thought and also to express the feeling that we should have home rule, that the legislature should not be able, when we do have a home rule charter, to engage in too much regulation of local affairs. However, I do think that there might be some instances in which gross inequities or unreasonable discrimination could exist, and in which the legislature should have the power to correct these types of situations. I do think, for example, there might be instances in which the wages of employees could be allowed to sink to such a low level that it would constitute a gross inequity, and that the legislature should be able to enact a general law, remedial in nature, setting certain minimum standards so that local government employees would be treated fairly. However, this would be only in an unusual situation in which a gross inequity, or an unreasonable discrimination would exist. I believe this as a compromise between the two schools of thought that seem to be emerging in the debate. For that reason, I ask your support so that we might agree upon a complete home rule charter, home rule and complete regulation by the legislature, and then this section and move on to something else.

Questions

Mrs. Zervigon Judge Dennis, did you know that I am opposed to gross inequity and unreasonable discrimination?

Mr. Dennis Yes, I know that you are.

Mrs. Zervigon That's a background vote...my further questions. If something is grossly inequitable and unreasonably discriminatory, why do you classify the parishes or cities in which this thing is happening? If it's really gross and unreasonable, it seems to me it ought to be gross and unreasonable throughout the state. Is that not so?

Mr. Dennis Not necessarily, Mrs. Zervigon. I think that there are certain localities which can support certain types of programs, others are more able to support larger programs; I think that you might have a situation in which a small locality

whereas a larger locality might be...a more affluent locality.

Mrs. Zervigon Is it not so that in our Bill of gross inequity, but inequity to as large an extent as is possible, and we have also forbidden unreasonable discrimination in our Bill of Rights. Isn't that correct?

Mr. Dennis That's correct. I'm not sure that it's clear that that would apply to an inequity or discrimination caused by a home rule charter... caused by the structure and organization of a home rule charter government. This makes it clear that fair treatment must result from home rule charter government.

Mrs. Zervigon Haven't we stuck in a bunch of phrases throughout this article saying that it must...the local governments must act in conformance... that are opposed to this constitution?

Mr. Dennis Yes, but this is designed to deal with this one sentence which I think is the crux of all the debate...this one sentence which says that "The legislature shall not pass any law, the effect of which changes, modifies or affects the structure and organization and/or the particular distribution, etc., powers of the local governmental subdivision." Now this...my amendment qualifies that only, and allows the legislature to enact such legislation only where there is a gross inequity.

me a reasonable

Mr. Dennis A reasonable classification? I think a reasonable classification is one that is based upon reason and good sense and doesn't unfairly discriminate against any city or other local government.

Mr. Dennis Yes, I think that we have recognized that. I don't know if there is a lot of litigation on it, but I know from having served in the legislature, that it is commonly thought to be a reasonable basis for distinguishing between one group of cities and another. If I am not mistaken, I believe we have enacted a lot of legislation which classifies cities on the basis of population.

Mrs. Zervigon So all cities over four hundred thousand would, to your mind, constitute a reasonable class.

cities over four hundred thousand?

Would that constitute a reasonable

Mr. Dennis Well, Mrs. Zervigon, it depends upon what the legislation is designed to affect. I think you have to consider the bill as a whole.

Mr. Smith Judge Dennis, how would you define "unjust inequities" and "unreasonable discrimination"? I say, do you think that kind of language ought to be frozen to the constitution? Who's going to determine those things?

Mr. Smith I think we should be careful to keep it as simple as possible.

of the law." These, I admit, are not in great detail. It would take volumes to spell it out, Mr. Smith, as you know.

Mr. Dennis Yes, sir, I do. I think this is an idea that I feel...this is my idea of what we should do. We should say to home rule charter, local government, you can run your government any way you want to. But, if you do something bad that's real bad, and real bad is not very good constitutional language, what I'm saying is "gross inequity," or "unreasonable discrimination," then we are going to give the state legislature the power to correct that.

Mr. Lanier Judge Dennis, didn't we debate long and hard yesterday to make sure that the existing home rule charters would not be in violation of any of the rights and privileges that we have made inalienable?

Mr. Dennis I believe we did, but I'm not sure that we did a good job, and I'm not sure that we affected this one sentence which I believe is of crucial importance here. You know, this sentence tells you when the legislature can enact a law affecting local government structure or organization. My amendment says it can't do it except when there is a gross inequity or an unreasonable discrimination.

Gravel's amendments today that make sure the powers of local government are not inconsistent with the provisions of this constitution?

Mr. Dennis Yes, sir, but I'm not sure that it

Mr. Lanier Is it your opinion that this amendment is superfluous redundancy?

Mr. Dennis No, sir, I think this amendment may be the compromise we can agree on, I hope.

Mr. Jack Mr. Chairman and ladies and gentlemen, I have not said anything on this proposal because it's not a field I felt was one that would have glaring defects. Now this amendment is the only one I've seen since this session...it's like "reasonable classification" and "unreasonable discrimination." You've got another legal hassle right there.

this. It puts everything in the legislature

Now so you'll know I'm consistent, I want to make

others. Now I'll go into some of the things that I think are important.

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when I read this thing I nearly jumped six feet high. So I say, let's get rid of this and if this be a compromise, I sure don't want to see a thing that's not a compromise because I don't believe I could take it.

Let's vote it down.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, I know we've been discussing this particular section long and hard, and as Mr. Jack said, this is a bad, bad, bad amendment. I think we ought to realize it. So please, let's vote this amendment down and get on to the next one.

[Unintelligible speech - 1:00:00]

Closing

Mr. Dennis Mr. Chairman, fellow delegates, in the spirit of fair play and compromise, I ask you to vote on the amendment. I think the problem rather than the rhetoric you have just heard. Now we're at an impasse. We're either going to have complete home rule in which a local government can exercise discriminatory practices and the legislature can't do anything about it, or we are going to have no home rule in which everything is decided in Baton Rouge. Now I do think this is a viable compromise. It says that local governments which have a home rule charter can run their government unless there is an unreasonable discriminatory practice or a gross inequity which arises out of that operation.

Now we've used words like "unreasonable discrimination" and "gross inequity" throughout this constitution. As I said, I'm going to Mr. Smith's question earlier, we didn't quibble when it came to "due process of law" and "equal protection of the law" because what we are saying is a sense of fairness. That's all this amendment does. It says that home rule charter governments can run the show as long as they do it fairly. I think this is a good compromise. It's something that we can live with together and allow home rule. But yet, give some check upon unreasonable home rule to the state legislature. So I ask that you adopt this amendment.

Questions

Mr. Burson Judge, haven't we guaranteed in the constitutional provisions that we adopted under the Bill of Rights section, equal protection of the laws for all the citizens of this state?

Mr. Dennis Yes, sir. We have that language.

Mr. Burson With Mr. Gravel's amendments, haven't we made doubly sure in boiler-plate language that the provisions of the constitution would apply in any home rule unit?

Mr. Dennis Well, you have, except you have this sentence in Section (E) which says that the legislature can't enact any laws changing the structure, organization of local governments. Now I think that needs to be qualified to make it clear that the legislature can, if an inequity or discrimination exists.

Mr. Abraham Judge Dennis, on what basis do you make your assumption that local governing body would be any more discriminatory than the legislature or any other governing body?

Mr. Dennis I don't. I don't presume that. That is why I think that the word should be qualified to require "a gross inequity or an unreasonable discrimination." I think that we should presume that local governments are going to act fairly and that they shouldn't be overruled any time the legislature thinks they are wrong. I think they should be overruled only when the legislature sees a gross inequity in a local government operation.

If there are not further questions, I will call for

your favorable vote on the amendment.

[Unintelligible speech - 1:00:00] Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment sent up by Delegate Jenkins. Page 4, at the end of line 3, page 4 at the end of line 3, add the following:

"In addition, a proposal to adopt, amend or repeal a home rule charter may be made by the governing authority or by petition of at least ten percent of the electors or ten thousand electors, whichever is the lesser, of the governmental subdivision or subdivisions affected thereby."

Explanation

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, you adopted, I guess about three or four amendments ago, allowing for ten percent of the electors and of the people, registered voters, to make a proposal to create a charter commission to amend, repeal or modify as such.

Mr. Jenkins came over to me. He said he had to leave. I said, "I'll try, Mr. Jenkins." But Mr. Jenkins' concern is this: that what we did by the adoption of the Bergeron-Jackson amendment is to not offer a proposal before the electorate that will go to the ballot and just offer a proposal to have a charter commission to draw up something. And his concern was that we ought to have the alternative, that we ought to have ten percent or ten thousand people to offer a proposition that will be placed on the ballot. And that is the gist of the Jenkins amendment as explained. The proposal and the way we amended it, it just said ten thousand or ten percent to have a charter commission to do it. Now what if the people want to propose one directly to the ballot? We didn't provide for that kind of mechanism, and this attempts to correct the situation.

Questions

Mr. Kean Mr. Jackson, as I understand it, even though the people of a particular municipality or parish might want to put into their local charter five percent, this would mean you would have to have ten percent.

Mr. J. Jackson No, no, no, Mr. . . well, that holds true for the last amendment if we follow your rationale. But the only thing it attempts to do is to allow ten percent or ten thousand, and we recognize that because of the problems that exist with present charters to allow the people to make a direct proposition to be placed on the ballot. We had some reservations on the right that we were putting in, we allowed for a charter commission to do it; his reservation was that he did not... what if the charter commission did not come out with the basic concepts of what the people wanted? Presently, right now, even in the city of Orleans, and I understand it's in Shreveport, ten thousand people can petition the city council to place a thing on the ballot. It doesn't have to go through the process of having a charter commission to review it, to make a determination whether or not it's going to go on the ballot. As I have talked to Mr. Bergeron, we thought when we introduced our amendment that it was all-inclusive, but evidently there was that error.

Mr. Kean The thing that disturbs me, Mr. Jackson, is in terms of a smaller municipality, we will say, that has a population of five thousand. As I read this, five hundred people could call an amendment, call an election for, or require an election to be held. Don't you think that could lead to a number of successive efforts to amend, at considerable expense, unless you put some provision in here that they couldn't do it more often than a certain length of time?

that argument holds true for the amendment that we adopted. I am not as concerned with the fact, and I think it's been brought out, that we have not had the kinds of amendments placed on the ballot. This offers citizens, if you want to talk about the right of a people to petition this government, to do it. I think that your concerns or maybe the concerns that I understand that you echoed about the amendment we are adopting, is only applicable, except that we are saying that in this situation, do the people have a right to get ten percent or ten thousand to oppose the proposition on the ballot? I think in terms of the cost involved, Mr. Kean, I think it's brought out that that has not been a regular practice.

Mr. Lanier: Mr. Jackson, as I read this thing, it says, "A proposal to adopt, amend, or repeal a home rule charter may be made by the governing authority or by petition of at least ten percent of the electors or ten thousand electors, whichever is lesser." Does that mean there is a straight shot deal if ten thousand people sign a petition, it goes on the ballot, and you've got to vote on it, to repeal a whole home rule charter?

Mr. J. Jackson: To repeal, amend or modify presently, Mr., I stand corrected from somebody from my own city, but presently that's the provision that we have in relationship to getting propositions on the ballot, which would be considered as an amendment to the charter. Not only, Mr. Jenkins raised to me the concerns that we said that we would... people would have to go through this process that we did, go to a charter commission, then they in turn would have to review as such before whether or not it goes on the ballot. All I'm saying is that if it doesn't... as I understand it in the existing charters, and I stand corrected, that is presently allowed. I don't know if the percentage is... I know in Shreveport it's ten and in New Orleans it's ten thousand. If we had done that, we would have done an amendment to the charter. What I'm saying to you, Mr. Lanier, is that we have a straight shot, or the citizens of the city of New Orleans has a straight shot to put the proposition, you know, to the voters. Now, I think and you know the same kinds of concerns that have exhibited by the voters, you know the voters have not been readily enough to accept constitutional amendments, so I don't think that the scares there that they are going to accept to, if somebody put a proposition to repeal the charter of New Orleans, that they are going to adopt it.

Mr. Lanier: The thing I'm getting at, Mr. Jackson, is this Section (B), as I read it, provides for calling an election to elect a commission to prepare and propose a charter or alternate charter. As I read what you are doing, this doesn't have anything to do with the charter commission at all. Is that right?

Mr. J. Jackson: I have not read that section.

Mr. Lanier: The charter commission.

Mr. J. Jackson: It does not... talks about the charter commission. It means that, you know

thousand signatures to try to get ten thousand signatures.

Mr. Lanier: Who's going to do this process?

Mr. J. Jackson: I want to disagree with it, that presently

and even among... within the

thing and you're saying some this to say that a home rule by the... in addition to a p or repeal, a home rule chart governing authority or by pet that the governing authority, say the city council of a city who has a home rule charter, could amend it just by them passing a resolution?

Mr. J. Jackson: They could put the the ballot, as is presently done, p our city. They can do it; I think you can do it. You can do it by the doing it, or you could do it by direct petition from the people.

Mr. Segura: But, it sounds like the city council doesn't even have to go to the vote of the people amend the charter. Am I right or am I wrong?

Mr. J. Jackson: That is I understand, Mr. Jenkins, I understand that the wording of it... it has to go to a vote of people because the charter itself says that any amendments to the charter must be approved by a vote of the majority, electors of the people.

Mr. Lanier: They,

Mr. [J.] Jackson: O.k.

Further Discussion

Mr. Perez: Mr. Chairman and ladies and gentlemen of the convention, as you know, when Representative Jackson came up before, we went along and did not seriously object to what he was saying. But this particular amendment from the standpoint that if we have adopted a home rule charter, the method by which that charter will be we would be doing, in effect, is by people of the state are going to vote

that they would use the method. Now again, I repeat

up to this convention

whether it be

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without necessarily going through the process of the city council having to print a charter revision commission. So, I don't see...based on objections that I've heard, I think that (1) say it's by the subdivision affected and (2) that this is not new because I know of one charter in the city of New Orleans that allows it and (3) that it's the basic fundamental proposition of the people to place by petition any issue, whether it's the charter or rather it's some particular issue whether, you know, before the voters. I don't think that there is that serious objection as Mr. Perez says. I ask you for your favorable adoption of this amendment.

[Amendment rejected: 40-67. Motion to reconsider tabled.]

Amendments

Mr. Poynter Mr. Chairman, Mr. Jenkins has sent up an amendment to (C) as well.

Amendments are as follows:

Amendment No. 1. On page 4, line 4, after the word "adopted" and before the word "when" insert the following:

" , amended, or repealed "

Amendment No. 2. On page 4, line 5, after the words "on the" and before the partial word "pro-" delete the word "charter."

Explanation

Mr. J. Jackson I've just basically talked...later...I've talked with the chairman of the committee who has no objection. What it attempts to do is to insert the words "amended and repealed." The second amendment as I appreciate it, and I could be wrong, is to delete the word "charter." I'm kind of sorry that the last amendment failed, because I didn't want the convention to think that was a radical change from what's been done, because as I've said before, Mr. Denney will attest to it, that right is already amended and I just wonder by the failure of the last amendment, do we take anything away from our existing charter? But on this amendment, I understand the committee has no serious objection. I ask for the favorable adoption.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Arnette]. On page 5, line 6, immediately before the word "unless" delete the following:

"including Section 9 of this Article,"

[Amendment reread.]

Explanation

Mr. Perez All it does if you read the few words right before that, it has a general reference to the fact that...I'll read the whole section to make it clear. "A local governmental subdivision adopting a home rule charter under this Section shall also enjoy such additional powers and functions as are granted to local governmental subdivisions by other provisions of this constitution." All that the Arnette amendment would do would be to delete "including Section 9 of this Article," because it should be taken care of by the general verbiage above that. I see no objection.

Amendment

Mr. Poynter Amendments sent up by Delegates Gravel, Ambroise Landry, Martin, Edwards and Mire.

On page 5, delete lines 9 through 13, both inclusive, in their entirety and insert in lieu thereof the following:

"(G) No home rule charter shall contain any provisions affecting any of the following offices: judge or justice of any district, appellate,

Supreme Court; district attorney; parish or city school board; sheriff; clerk of the district court; coroner; or assessor, which is inconsistent with the constitution or any law now or hereafter enacted."

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, the provision suggested by the committee in its article on page 5, line 9, in the opinion of some of the delegates, was too restrictive because it dealt only with the question of the powers and functions of certain offices not being adversely affected either by this section or by the constitution. The proposed amendment simply says that no home rule charter shall contain any provisions which are contrary to this constitution or contrary to state law insofar as they purport to affect any district, appellate, or Supreme Court judge, any district attorney, any parish or city school board, any sheriff, clerk of the district court, coroner, or assessor. This proposed amendment is much broader in scope to make it absolutely clear that everything [everything] more or less relating to the judges named, to the offices named, must be provided for either in this constitution or by a law adopted by the legislature. I think it's clear that we are trying to broaden the committee concept. I'll answer any questions.

Questions

Mr. Abraham Camille, is this language really necessary? Have we already provided for these things in the Judiciary Article and in various other articles, for the duties of the judge and so forth?

Mr. Gravel I think it's absolutely necessary, Mr. Abraham, because of the provisions that we have in here with respect to the home rule charter. The only limitation on the home rule charter, as I understand it, as a consequence of what we have done, is whether or not there's a conflict with the constitution. I do think this is necessary; apparently the committee thought it was necessary to the extent of putting it in. The concept the committee had, I think, is still here. We're just making sure that this language goes beyond just the question of powers and functions. For example, no home rule charter could provide with respect to the compensation that would be paid to these particular offices.

Mr. Abraham You mean to tell me that if this constitution spells out the duties of a judge, that another piece of paper which is not in the constitution, a home rule charter which is not in the constitution could serve as a precedent of this constitution?

Mr. Gravel I think the way the language is in this particular section, Mr. Abraham, and I want to answer your question, I think the language of this section as it presently exists clearly could be so construed.

Mr. Gravel, in what way could they possibly have any control over a Supreme Court judge?

Mr. Gravel I don't know of any way they could have any control over him.

Mr. Stinson Well, don't you think you have left some out? You don't have the justice of the peace and constables and city courts and city marshals and ward marshals; they...

Mr. Gravel Those were left out clearly because of a request by two members of the committee that they be left out, because they should be dealt with or could be dealt with, or there should be permission to deal with them in a home rule charter.

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Mr. Stinson Constable and justice of the peace,

Mr. Gravel

Mr. Stinson Constable and justice of the peace, are they going to take care of them, too?

Mr. Gravel Well, they just aren't covered by this provision. It might be possible that some provision of a home rule charter, for example, a parish home rule charter or a home rule charter within a parish might necessarily have to prescribe with respect to a justice of the peace and also with respect to city courts.

Mr. Stinson Well, Justice of the Peace, Constable, and City Courts, are they going to take care of them, too?

Mr. Gravel Well, Mr. Stinson, this is not any laughing matter here, I don't think, sir. This specifically says that no home rule charter shall have any provision in it with respect to the offices named, contrary to any provision of this constitution, or contrary to any provision of state law. I don't think that this is an offensive concept.

Mr. Dennis Mr. Gravel, I wasn't aware your amendment was coming up. Did you know that Mr. Avant and I had a similar amendment but which is broader in scope and provides that the structure, organization, powers and functions of school boards, any court or its clerk, the clerk of the district court, the office of sheriff, coroner, or assessor shall not be affected by any provision of a home rule charter?

Mr. Gravel I'm aware of that provision, Mr. Dennis, but I think this proposed amendment is broader in scope than that proposal. We discussed that up here at the huddle among ourselves; some agreed that this proposal was broader and some didn't agree with it. We all agree that it's broader in scope, and I am familiar with that amendment.

Mr. Dennis Well, it doesn't exclude courts below the district court level? Are you aware that I think Mr. Avant and my amendment is needed in order to preserve what we adopted in the Judiciary Committee, a grant of power to the legislature over the courts below the district court level?

Mr. Gravel Let me... I misunderstood you, because I think we are talking about two different scopes. I think your amendment is broader in scope with respect to the potential number of officials that might be affected. I agree with that and agree with your observation which respect to the city courts. I think this is broader in scope, insofar as it applies to the main officials, that there is more protection accorded to these officials by referring to the statute in the constitution than by referring to the structure.

Mr. Dennis I think that I would like to see your amendment to include the other courts if your amendment passes.

Mr. Gravel I have no objection to it at all, and I just want to make this perfectly clear. If you will look at the amendment the way I originally proposed it, it would have provided that no home rule charter could conflict with any statute or with the constitution, insofar as any office created by this constitution was concerned or the offices otherwise specifically herein named. That change was made, and I think perhaps with some justification, at the suggestion--and I hope I'm saying this correctly--of two members of the committee who felt that it was better to stick to the statute.

Mr. Gravel Well, I'm not trying to infer that maybe a home rule charter will do that.

Mr. Champagne

Mr. Champagne I mean the home rule charter. How could that affect a Supreme Court judge?

Mr. Gravel Mr. Champagne, let me say this. The two members of the committee suggested that this be inserted in there for the protection of all judges so that there wouldn't be any question about it. I don't know how it could affect them. It might affect district judges in some way with respect to their compensation. Frankly, it might not have been necessary to say "appellate or Supreme Court judges."

Mr. Champagne In other words, I read it as somebody trying to impress us that this home rule business was pretty broad, and that's all it is, it left the governor out.

Mr. Gravel Well, I'm willing to let it go.

Mr. Conroy Mr. Gravel, I was concerned about the last part of your amendment which refers to "...inconsistency with the constitution or any law now or hereafter enacted." Would that mean... possible for the legislature to increase the powers and functions, say, of the sheriff, to the detriment of local officials that have been established in a home rule charter?

Mr. Gravel That would mean that if the legislature prescribed the powers, duties and functions of the sheriff, that a provision in any home rule charter could adversely affect that provision of law. That's exactly what that would mean, sir. That's what it's intended to do, Mr. Conroy.

Mr. Rayburn Mr. Gravel, looking like you're trying to take care of the judiciary and a lot of other people. Do you think we might... ought to add the legislature in there?

Mr. Gravel Well, it's all right with me if you want to add it in there. All I want to be sure of is this, ladies and gentlemen of the convention: the original proposal that I had, provided that no office created by this constitution, and specifically those offices named in Subdivision (G) of this section, could be adversely affected by any charter provision that was in conflict with the constitution or statutes. The other provisions that are in here were put in at the suggestion of the committee.

Further Discussion

Mr. Avant Mr. Chairman, I would like to rise to oppose this amendment. I don't think it's in the best interest of the people who are going to vote on this amendment, but I'll tell you what it does. It says "No home rule charter shall" so forth, so on "which is inconsistent with the constitution or any law now or hereafter enacted." Now, the language that I'm concerned with is "hereafter enacted." I think it's important that we permit, it permits the legislature to increase the powers and functions of the municipal government, or local government, or any other office created by the constitution, or the court, coroner, sheriff and justice of the peace. I think it's important that we permit the legislature to increase the powers and functions of the municipal government, or local government, or any other office created by the constitution, or the court, coroner, sheriff and justice of the peace. I think it's important that we permit the legislature to increase the powers and functions of the municipal government, or local government, or any other office created by the constitution, or the court, coroner, sheriff and justice of the peace.

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ferred and that Judge Dennis and I are coauthors of, which uses the language that is in this article about powers and functions, structure and organization and particular distribution and redistribution of powers and functions, because the law is, as interpreted by the court, that pay or personnel is not a matter of powers and functions, it has to do with structure and organization. Therefore, if the local government cannot be affected by legislation dealing with structure and organization or a particular distribution and redistribution of powers and functions, then the legislature cannot pass a statute on the subject.

[Amendment withdrawn.]

Motion

Mr. Perez In order to give us the time to get this matter straightened out. It's quarter or ten minutes to seven in the evening and there is no question about the fact that we do want to straighten this matter out to make it perfectly clear that none of these offices could be included in a charter form of government. I call your attention to the fact it says "for the government of the local governmental subdivisions." But be that as it may, I would like to move at this time we move to the regular order of business, and we will have this matter straightened out by tomorrow morning.

[Motion adopted without objection.
Adjournment to 1:00 o'clock a.m.,
Saturday, September 22, 1973.]

ROLL CALL

ROLL CALL

PRAYER

share with You this work of writing a new constitution for the people of Louisiana. You are the original constitution writer, having given us the Ten Commandments and the Golden Rule which mortals cannot improve upon. You're also a legislator, executive, and judge. Whose word is law. Whose authority precedes in time and eternity, any government. As we in Louisiana prepare a new constitution, we recall that Your constitution has given us the inalienable right to be Your friend, and we pray that You bless our work so that it will serve our people for as many years as You see fit. We thank You for giving us this year an outstanding group of people to perform this task and reminding us by our deadline that we have a brief time in which to do it. We pray and ask for Your guidance. We pray, also, for all public officials, that You give them the wisdom and guidance to do right for your people. Finally we ask that You stand by each day, Lord, that You may add love and music and beauty to our work, that You take the controls, cue us that words may float clear. Please level our conceit with Your grace. Kill the blasting booms of pride. Mix the glamour and thrill into Your will. Forever keep us cued to truth, paced to Your script, then amplify our simple thoughts, fill our constitution with wisdom's words where interpretations pick them up for the people's good and Thy glory, and when the writing's all recorded, may we and all Your people be rewarded with the pat of Your hand, the signal for a work well done. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17 introduced by Delegate Perez, Chairman on Behalf of the Committee of Local and Parochial Government, and other delegates, members of that committee:

A proposal making general provisions for local and parochial government, levee districts, and ports, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal at this time is that the committee has adopted as amended Sections 1, 3, 5, 6, and 7 of the proposal, has voted to delete Sections 2 and 4 of the proposal, and presently has had under consideration Section 8 dealing with home rule charters.

Amendment

Mr. Poynter Amendment as follows: Avant and Dennis, to Paragraph (G).

Amendment No. 1, on page 5, delete lines 9 through 13, and insert the following: "(G) The structure and organization, the powers and functions, and/or the particular distribution and redistribution of the powers and functions of a parish or city school board, any court or its clerk or other personnel, the clerk of the district court, the offices of sheriff, coroner, (and there's been a correction or an addition here; insert 'district attorney'... of sheriff, coroner, district attorney (that should be added to your copy) or assessor, shall not be affected by any provision or amended under the provisions of this section."

numberation of offices, district attorney" should be added immediately following the word "coroner".

the words "structure and particular distribution of powers and functions" on the refer to the last part of the containing definitions, you and functions" are defined, a organization and the particular redistribution of powers and fined. Now, that language, a yesterday, was put in this act and not by accident. It come of government of the city and the parish of Baton Rouge, and it comes right out of a definition and interpretation of those terms by a decision of the First Circuit Court of Appeal in the case. Now, to boil that down to what means, when they say that only the powers of those offices shall not be home rule charter, they are in the that the structure and organization, redistribution and redistribution and functions can be affected by a home rule charter. Now, what that means simply in a nut that a home rule charter could provide for sheriff, assessor, clerk of board--all of them that are named in this subsection--insofar as a person concerned, insofar as pay is concerned, in the day to day operation of those offices concerned, could be brought under the control of the local governing authority. Now, that's what it means. That's exactly what it means. It wouldn't change the basic powers and functions of the office, but the manner in which those powers and functions would be exercised would be subject to the control of the local governing authority. For instance, to take in this particular parish, if this amendment is not adopted, then you are in effect amending our plan of government to make it where it would be permissible for that plan of government to be amended to whereby the parish could take over, if the people wanted it, if they voted for it, the personnel administration to day operation of all of these local offices that we have so far set-up in this act. Now, I don't think that that which should be left up to a group in where only that group will vote on a home rule charter. That is a matter of as to how the office of district attorney, clerk of court, the judiciary and the other offices which were set-up in this act shall be operated. Now, you can

affects the people of the parish, and that reason constitutes a violation of the Judiciary Article and the Constitution of this state. Therefore, if we amend the constitution, which I have offered as an amendment, it would be unconstitutional and follows the same principle as the one that I have offered in this act, and it would be deconstitutionalizing those offices which are

Mr. Champagne Mr. Avant, do you object?

the local and parochial government offices and employees."

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Mr. Avant: Well, Mr. Champagne, the amendment was drawn in this particular fashion so that it would say exactly what I was intending to say, no more and no less, and leave no room for interpretation, and that is the reason that I want to set out specifically and in detail in the same language that this article uses, when you refer to these terms, what offices shall not be affected. Those offices are the constitutional offices which we have set up.

Mr. Conino: Delegate Avant, I notice you state in your amendment, "personnel."

Mr. Avant: I'm sorry, Mr. Conino, there isn't be something wrong with the amendment.

Mr. Conino: I said I notice in your amendment, you state in here "any court or its clerk or other personnel." Supposing as in the city of New Orleans that you have personnel which are under the city court, what happens to that personnel? The city of New Orleans has no jurisdiction over that personnel?

Mr. Avant: Well, that personnel is under the jurisdiction of the court now. I would assume, rather than the council.

Mr. Conino: But, supposing they wanted to change that. Do you mean to tell me that the city of New Orleans would have no jurisdiction under its own... of its own employees and its own courts?

Mr. Avant: Well, that's the way I understand it is now, and if you want to change it, that is one of the things that I don't think you should just be able to just jump up and change, unless you want to put city of New Orleans excepted in this thing, which I wouldn't recommend.

Mr. Tobias: Mr. Avant, I'm reading the amendment, and it says, "any court or its clerk or other personnel" and then it continues and says "the clerk of the district court." What's the difference between the two phrases?

Mr. Avant: That language was changed. I had originally drawn it, "any court, its clerk or other personnel." It was changed. I had changed it from what the committee section report said: "the clerk of the district court" back in at the request of Mr. Ambrose Landry who says that the clerk of the district court is not the clerk of the court. Now, he's something other than the clerk of the court, that the phrase "the court and its clerk" does not embrace the clerk of the district court. We may have a valid point. I'm not sure, but rather than take a vote on it, that's the reason I put that back in there.

Mr. Tobias: A further question: You state, "the clerk of the district court." Would it not be better to say "the clerk of the district court, such as Orleans has two district courts, and when you say "the district court"...

Mr. Avant: I wouldn't object to that, Mr. Tobias. I'd withdraw the amendment and resubmit it with that technical change, if that's agreeable.

Mr. Avant: That's right, and just bring it back and say, "the clerk of a district court" and rather than "the clerk of the district court."

[Amendment withdrawn and resubmitted
with technical amendments.]

Questions

Mr. Casey: Mr. Avant, the question I have is directed at the words "any court or its clerk," etc. Does this prohibit the formation or adoption, under a plan of government or a home rule charter if adopted, the formation of municipal courts for infractions? For instance, in New Orleans we have traffic courts and municipal courts to try violations of city ordinances. How does this affect those

types of courts or municipal courts, which are permitted under other provisions of the constitution?

Mr. Avant: Mr. Casey, that was intended to leave the situation with respect to the courts as it was when we adopted the Judiciary Article, and to leave it up to the legislature as to whether those types of courts would be discontinued, continued, changed, abolished, merged or otherwise altered in accordance with an overall comprehensive plan, statewide, for the operation of the judiciary insofar as the number and types of courts that we will have or concerned.

Mr. Casey: Maybe there you're talking about existing courts under the Judiciary Article. I'm asking about new courts under a home rule charter. Would they be provided for under a plan of government, the home charter, municipal charter, etc.

Mr. Avant: It was the intent that such courts would not be created without legislative approval.

Mr. Casey: Well, does this prohibit a home rule charter in providing for its own courts, municipal courts or traffic courts?

Mr. Avant: I don't think it would prohibit it, no, sir.

Mr. Casey: Well, there seems to be some disagreement on that, Mr. Avant.

Mr. Bayburn: Mr. Avant, would this keep intact where you have a city court with a specific jurisdiction now as to what they can try? Would this keep that intact as it is, or without this could a home rule charter provide that a city court could have the same jurisdiction as a district court?

Mr. Avant: The home rule charter would not be able to affect a city court. The city court would be affected by the legislature, which was the intent...

Mr. Bayburn: But, without this provision or this language in this particular section, they could, could they not?

Mr. Avant: Yes, sir. I think they could, under a home rule charter.

Further Discussion

Mr. Abraham: Ladies and gentlemen, when I read this Paragraph (G) in the proposal of the committee, I asked why did we need this Paragraph (G)? Why do we need to make these exceptions. I asked several members of the committee why. They felt that it actually was not necessary. Paragraph (G) was not needed, but it was put in because a few people thought that maybe we ought to have it in, maybe it would be good to have it. Well, I question the need for this type of thing at all because you have seen what has happened now...you made a provision for a few specific exceptions, simply to take care of a few people; then the question arose, well, how about all these other offices that are not included, and so we've seen amendment after amendment to try to cover any new office that anyone may have thought of. Now, the Judiciary Article provides for the courts. It gives constitutional sanction to the courts of limited jurisdiction, and specifically authorizes the legislature to change them, provides for the juvenile courts, the mayor's courts, the sheriff, the clerk, the coroner. Well, if any provision or any article of this constitution has given us the sanction to an office, and if we have provided in its home rule charter that it cannot do anything inconsistent with other provisions of this constitution, then why do we need to clutter up our constitution by trying to spell out all these particular offices in here which are already excluded? Now, we didn't go in the Legislative Article which enacts, in the same way, to an office, enacts the laws, that it can enact laws, but it cannot do it where it conflicts with other sections of this constitution. That's taken for granted. The constitution is the basic law. Any law that the legislature

the constitution would be declared unconstitutional. Well, by the same token, the same thing would happen here, and I think that all we are doing is cluttering up this article by inserting language to take care of all these special exceptions which are really not necessary. The thing that we are trying to do here is simplify this constitution where people can understand it, and I don't see how by any stretch of the imagination, anyone can assume that a home rule charter, which in effect is a statute, can override another provision of the constitution. I see no need for the Avant amendment; I see no need for any of the other amendments; I think that Section (G) can actually be taken out of here, and it won't hurt this section one bit.

Questions

Mr. Avant: I disagree with you. Let me give you a hypothetical example and see if you won't agree that maybe we do need something like this. Take the jurisdiction of a district court. Wouldn't you agree that unless something is in here, a home rule charter could extend the jurisdiction of a court perhaps?

Mr. Abraham: No, because the constitution fixes that, and it provides that the legislature shall handle... it specifically authorizes the legislature to fix these things.

Mr. Neil: I disagree with you, Mr. Abraham.

Mr. Abraham: Well, I'm sorry.

Mr. Avant: Mr. Abraham, I heard you make the statement, in your presentation there just then. It said something to this effect, a home rule charter, which is in effect a statute. Would you believe that if you think that, that you are, I respectfully submit, sir, just as wrong as you can be, because a home rule charter under this article as it's written is in effect a constitution?

Mr. Abraham: I disagree, Mr. Avant, because the home rule charter is not written into the body of the constitution.

Further Discussion

Mr. Perez: Ladies and gentlemen of the convention, as you have noted from the graph (G) that was contained in the committee proposal, the Committee on Local Government wanted to make it absolutely and perfectly clear that this authority to adopt a home rule charter would not in any way affect these constitutional offices. I have tried, both yesterday afternoon and this morning, to make that as clear as I possibly can and to ask all of those who were interested to come up with a proposal better than the committee proposal, and I would support and the committee would support any such proposal. Mr. Gravel will have an amendment coming later which I understand meets with the approval of the various sheriffs, and so forth, who are delegates to this convention, and for that reason, I would suggest to you that the Gravel amendment should be the one adopted in lieu of this particular amendment because I want to be perfectly sure and perfectly clear that the people most directly involved--and that is, the sheriffs, assessors, and clerks of court and so forth--are completely satisfied that there is no attempt or would be no attempt in this article in any way to affect their offices. So, therefore, I would suggest to you that you de-

one is passing the word on the floor that I and Mr. of you voted against it for that reason. That is absolutely not true, and I just wanted to make that clear. We offered this amendment because we thought it was absolutely essential to preserve what we adopted in the Judiciary Article, and that was the power of the legislature to reorganize the courts below the district court level, and if you do not exclude the courts from the effect of the home rule charter, you're undoing the most important reform measure that we adopted in the Judiciary Article. So, we certainly did not intend to amend the amendment, and I'm going to offer amendments to make certain that the Judiciary Article is preserved intact. I believe there was some misunderstanding on this provision, and I apologize for not getting it up and speaking on it. I thought that it would pass, and I frankly think the reason it didn't pass is because there was some false information circulated that we were preparing another amendment.

Amendment

entirely

Explanation

to delete this particular paragraph from this section. As I spoke a while ago, I see no need to clutter up our constitution with language like this, that if we had provided in a particular article for certain offices and the Educational Article provides for the school boards, the Revenue Article provides for the assessor, the Judiciary Article provides for these various offices. I see no need to clutter up our constitution by providing for exceptions because the problem that you get into there that is if you enumerate certain exceptions, and you may miss some others, then is it going to be interpreted that these particular sections that are offices are enumerated but will be covered, and those that are not enumerated will not be covered, and I think that we open ourselves up to a lot more questions by doing this type of thing than if we would simply let the constitution itself, take care of itself, and the other articles that have made the specific provisions will be paramount over any other provision that might be made for home rule because we don't want to be inconsistent with any other provision in the constitution.

Questions

Mr. Roy: Mr. Abraham, have you been here the last two days?

Mr. Abraham: Yes, sir. Have you?

Mr. Roy: Yes, I've been here. Have you seen that... you will admit that both sides of this Local Government Article obviously believe that something needs to be done with Section (G), that is, the committee that reported out the exceptions, and some of us others who think that it's not broad enough, do you not?

Mr. Abraham: I understand that. I don't actually feel that it was necessary, but I do feel that there is a need for a more comprehensive very much disavowment on what needs to be included.

Mr. Roy: I understand that.

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Mr. Gravel was going to come up with with respect to (G)?

Mr. Abraham But, he is supporting it simply to put a stop to the argument in order to try to get the section passed.

Mr. Roy I take it you don't think, you're only one of the few who don't think something's necessary here?

Mr. Abraham Do what?

Mr. Roy You are one of the few who don't think there needs to be some explanation of (G) then.

Mr. Abraham It's very obvious, Mr. Roy, there is a lot of disagreement on this article.

[Previous question ordered. Amendment rejected: 15-80. Motion to reconsider tabled.]

Amendment

Mr. Poynter The amendments [by Mr. Gravel] that are being passed out need to have several changes with respect to them. They were drawn by way of inserting a Paragraph (H) and have now been changed to delete the present Paragraph (G) and insert a new one, so it should read:

On page 5, strike out lines 9 through 13, both inclusive in their entirety, and insert in lieu thereof the following: (these are just getting ready to be passed out.) "(G) No home rule charter or plan of local government shall contain any provision inconsistent with this constitution or any law now or hereafter enacted which (instead of the word "with") affects the offices of district attorney, sheriff, assessor, clerk of the district court, coroner, parish school board or city school board." Again, as these copies are passed out, I reiterate the amendment was drawn so as to add a Paragraph (H). It has been changed so as to delete Paragraph (G) and insert a new Paragraph (G). In addition to the instructions, one further change needs to be made. On line 4 of the proposed paragraph which should be (G), the word "with" should be changed to the word "which"; the word "with" should be changed to the word "which".

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, let me begin by making two very pertinent observations. First of all, this is the amendment that Mr. Perez said was better than the last amendment. Now, he hasn't told me yet he was going to support it but at least I'm moving in the right direction. The second observation I want to make is this is not just proposed by Delegate Gravel, which, of course, would pose some problems. My co-authors are Mr. Ambrose Landry, Clerk of Court, Sheriff Martin, Sheriff Edwards and Assessor Mire. I think that's necessary to let you know that this is not a particular or special amendment that I have but one that is proposed to this convention on behalf of the delegates representing those who are being considered by the amendment. Precisely and clearly I think it can be said that this amendment insofar as it relates to the specific offices named is broader and more comprehensive than the recommended committee proposal, but I believe that both the committee and this amendment seek to do the same thing and that is to make it clear in this constitution that with respect to the offices of district attorney, sheriff, assessor, clerk of the district court, coroner, parish school board or city school board, that no provision in any local government charter can conflict with the provisions of this constitution or with any statute relating to those offices. I think this makes it clear, and carries out the intention of the committee and leaves no room for doubt that local home rule charters...or rather that these offices are insulated from any provisions of home rule charter, if there is a constitutional provision or a statute relating to the

offices. I move the adoption of the amendment.

Questions

Mr. Hayes Mr. Gravel, I had amendment that ended with the word "enacted" and I had decided to support the amendment and thought it was a good one, but looked like you have another that ended with "board". Which one are you going with?

Mr. Gravel The one that ends with "board", but I think it...

Mr. Hayes That's the one that I didn't...I decided on the one that ended "enacted" when I thought you had made this agreement, and this was the one that I wanted to support, the one ended in "enacted" when I knew anything, another one was on the desk.

Mr. Gravel Mr. Hayes, let me just say this so you will understand it. I think that the second amendment says exactly the same thing with one difference. The first amendment also included, there was some concern about this, "Any other office created by the constitution." That's the only difference. That has been deleted because a number of the delegates didn't know the ramifications of that particular language. So, except for that language, Mr. Hayes, the import of the two amendments is the same. The effect would be the same.

Mr. Hayes Well, if the effects are the same, then I couldn't see any need for the change, Mr. Gravel. If they are the same. I like the first one.

Mr. Gravel Except for the fact that the first amendment encompassed not only the named offices, but every other office created by the constitution. And that's what was left out...and this particular proposal was restructured, but substituting that was the only change that was made between the two.

Mr. Hayes Are any or...or any law now or hereinafter enacted, was after "all other laws"...if everything else had been named, which would or could apply generally to other...provisions of the constitution, and when you nail it down and in your second one which made a difference to me altogether. Which means you changed the amendments in my opinion, Mr. Gravel.

Mr. Gravel I believe if you looked at them carefully now, Mr. Hayes, you'll see that all we've done is to leave out the general...catchall phrase that would have brought in other constitutional offices, besides those specifically named. Other than that it was just a question of style and rearrangement. That's all I intended to do and frankly, sir, I think that's all I did.

Mr. De Blieux Mr. Gravel, I believe that you would agree that any effort to consolidate any of these offices would affect those offices under this provision, is that correct?

Mr. Gravel Yes. It certainly would...any such effort would of course affect these offices.

Mr. De Blieux Alright, now you know that there is a city and parish school board in the parish of Washington, that is in Bogalusa...in the parish of Washington. You also have a city and parish school board in the parish of Ouachita...

Mr. Gravel Yes, sir. I'm...

Mr. De Blieux And I believe you had...I believe the same situation exists in the parish of Calcasieu?

Mr. Gravel No. Calcasieu...city parish board is not in existence anymore. In Washington, in Bogalusa, that's the parish of Washington and the city of Bogalusa, the parish of Ouachita and the city of Monroe, the only two city parish school boards that I know of.

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Mr. Gravel: ...effect, you might say of locking those school boards, as they presently exist, into the constitution?

Mr. Gravel: If it's so provided by statute, or by the constitution, it would...if it's so provided by statute or by the constitution. I know definitely that the city-parish system in Ouachita parish is indirectly confirmed under the provisions of Article IV, Section 9 of the Louisiana Constitution. In the Homestead Exemption section, I know that. In the realm...

Mr. De Blieux: Now, another thing, suppose the parish of East Baton Rouge as we presently have here, would want to consolidate their law enforcement activities under one office. It would prevent that from happening, too, wouldn't it?

Mr. Gravel: If there was a statute or provision of the constitution to the contrary, it would...not...no, I don't think it...Let me retract that. I don't think it would if that, you say that's the present situation?

Mr. De Blieux: ...if there was any effort to...then there is no way they could amend, that we have a home rule charter here in East Baton Rouge parish. Then...

Mr. Gravel: If in the future there was an attempt to do that, it was contrary to statute, then it could not be done under this particular provision.

Mr. De Blieux: ...

Mr. Gravel: That's correct, Senator De Blieux. ...if in the future there was an attempt to do that...a statute prohibited it, it couldn't be done.

Mr. Singletary: Mr. Gravel, why do you enumerate these particular offices rather than using general language?

Mr. Gravel: Because all of these are parish offices. Or within a parish, except the office of district attorney that in many places is an office co-extensive with the parish. These are the same offices that are set forth in the committee proposal with the exception that I added district attorney, because in some instances the district that the district attorney operates in is co-extensive with the parish, such as Rapides parish, my own.

Mr. Singletary: Well, would it not be generally understood that that was intended by this committee?

Mr. Gravel: Yes in this section, would it?

Mr. Singletary: You are not.

Mr. Gravel: What I am doing in this, Mr. Singletary, is to...is to do what I think the committee intended to do, and that is to insulate the named offices from any provision of the home rule charter that was inconsistent with this constitution...or by statute.

Mr. Singletary: I think that you have done this.

Mr. Gravel: Correct.

Mr. Singletary: Why?

Mr. Gravel: I think...

Mr. Singletary: What would you do next?

Mr. Gravel: Because I think the courts are amply cared for in the Judiciary Article, and that would come under the provision, "not inconsistent with the provisions of this constitution."

Mr. Denberry: Mr. Gravel, I don't know whether you heard Mr. Tobias' question to Mr. Avant. Would you agree to phrase that as "none of a district court"?

Mr. Gravel: ...

Mr. Gravel: ...

Mr. Denberry: Secondly, is there any reason to use the word "school board" in the constitution? I say "school board."

Mr. Gravel: Yes, there is. ...I say city school board?"

Mr. Denberry: Yes. ...

Mr. Gravel: I think Style and Drafting could delete those...I hadn't thought it out but there might be a reason for it, to this extent, Mr. Denberry, I did adopt the language of the committee proposal. I think you're probably correct. Mr. Goldman, I think might have some objection, being from Ouachita and I don't know what it would be, but it is possibly a reason why this was put in that way. I am not going to change it, let me say that.

Mr. Arnette: Mr. Gravel, the way I read that amendment that you got, if the legislature wanted to, say, do away with the assessors or the sheriffs, under your amendment they could do so. If they wanted to severely restrict their powers and duties, they could do that also, couldn't they?

Mr. Gravel: They could do that now, yes, sir. Except as limited by the constitution, absolutely.

Mr. Arnette: So in other words if the local people wanted a sheriff and the legislature didn't want them to have a sheriff, they could tell the local people "No, you're not going to have a sheriff." Isn't that true?

Mr. Gravel: I'd like to be able to answer that. I'll meet you at my desk 'cause I think you're off base.

Mr. Gravel: ...

Mr. Gravel: ...

Mr. Perez: Mr. Chairman, ladies and gentlemen of the convention, I just wanted to reiterate one more time that we want to be sure that we're doing what we intend to do, and it's my opinion that the Gravel amendment does it a little better than the others that have been offered to you before.

Mr. Gravel: ...

Mr. Will: Mr. Gravel, is all business in the state of Louisiana, which was the intention of the committee at the end of this year, do not, as a matter of fact that Section G accomplished everything that all amendments we have been told are trying to do?

Mr. Gravel: Yes, and that's why, that's why again I've been trying to save time by getting together with everybody and say, "Well, let's get together on the amendment" and apparently this is the one which...which has the most acceptance by most of the delegates and that's why I'm ready to go with it.

Mr. Gravel: Mr. Tobias, I was influenced by Mr. Tobias' question, and this is Monroe. I'm still interested in the amendment which I think is the one which would consolidate the two school boards now, and if the people wanted to consolidate and make one parish school board, would they not be able to do that? I don't want to be told...

Mr. Tobias: ...

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situation, with the present laws, or anything else. This is just a prohibition against the adoption of a charter or an amendment which would have these effects. It would not have anything to do with the present situation.

Mr. Goldman But, but if we should adopt one up there, that would then... say that, there would be one parish school board, it was a parish charter, would we be able to do that?

Mr. Perez That would be up to the legislature, assuming that they had the constitutional authority to do it.

Mr. Goldman But it would be, the legislature could provide for that to be done... they wouldn't be... they would be locked out of providing for that?

Mr. Perez No, sir.

Mr. Hayes Mr. Perez, you agreed on the amendment... on Mr. Perez' amendment, do you recall which one? The one ending in...

Mr. Perez It's the latest one that you would have before you...

Mr. Hayes ...ending in "board" or "enacted"... You had one ending in "school board" and the other in hereinafter enacted" which one did you agree on?

Mr. Perez This one right here.

Mr. Hayes Oh.

Mr. Perez That one.

Mr. Hayes Oh, good.

Mr. Perez The amendment ends in the words "or city school board".

Mr. Hayes Oh, yeah.

Further Discussion

Rev. Alexander Mr. Chairman, and delegates, I attempted to ask Mr. Gravel a few questions and at this time I wish to propose that question to Mr. Gravel, so in his closing remarks, he may answer them. First, in connection with the question raised by Mr. Denberry with reference to the City of New Orleans, Orleans parish, he inferred that we have both a criminal and civil district court clerk. In addition, we have a traffic court which has a clerk, a juvenile court, a first city court, and a second city court, all of whom have clerks and I would... ask Mr. Gravel to answer those questions. In addition to that, I'm concerned about other parochial offices there. For example, the recorder of mortgages is not mentioned here, the registrar of conveyances is not mentioned here, the constable is not mentioned here and I'm wondering if this amendment is designed to include all of those offices, and if it is so designed, then why not delete all of the language after the word "enacted" and just have a catchall sentence which should read thus: "No home rule charter or plan of local government shall contain any provision inconsistent with this constitution or any law now or hereafter enacted," and that would include everybody? It is my fear that some years in the future just may exclude some of those unmentioned positions - just add that in Orleans parish. I'm sure there's some in some of the larger parishes like Caddo and East Baton Rouge. I'll answer any questions.

[Previous question ordered.]

Closing

Mr. Gravel Mr. Chairman, I was going to waive the right to close but in order to respond to Rev. Alexander's questions, I don't think that there is anything in this provision which adversely affects any of the offices named by Rev. Alexander, and mainly because of the fact that there has been, and

is, an accommodation between the existing Orleans charter and the particular offices that are involved. Now, I think that if in the future there was some provision... there might be some problem with respect to other parts of the constitution. I don't think it's necessary really as much to protect what has been done, as to what may be done in the future by any plan or any home rule charter, and I look upon this particular section as beyond Section 7, where we have solidified and crystallized the existing charters that already have their powers, functions, and structures set forth, and I don't see any problem there at all and I imagine that's the reason why those particular offices were left out by the committee. If they want to come in with something later on to cover those offices we might consider that, but I don't think it has any application here because as I envision this section we're talking in the main about future plans of government and future home rule charters, and that would exclude Orleans. I have no further statement to make.

[Amendment adopted: 92-AY. Motion to reconsider failed.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Denberry], on page 5, between lines 13 and 14 add the following paragraph: "(H) The provisions of this section shall not apply to any local governmental subdivision covered by Section 7 of this Article unless its charter permits or unless its charter is repealed."

Explanation

Mr. Denberry Mr. Chairman and delegates, this amendment was circulated yesterday in case you're having trouble finding it, and the purpose of it was to establish beyond any doubt the question which was raised by Rev. Alexander and answered by Mr. Gravel, so that the provisions of the seventh Section, which has previously been adopted by the convention. The provisions of this section, Section 8 will not apply to any local governmental subdivision covered by Section 7, unless its charter permits or unless its charter is repealed. The purpose of it is to avoid any conflict between the two sections.

Questions

Mr. Gravel Mr. Denberry, is it the purpose of your amendment, in effect, to make Section 7 apply to existing charters and local plans of government, and Section 8 would apply to future charters and plans of government?

Mr. Denberry That's correct, sir.

Mr. Denberry Thank you.

Mr. Gravel ...and I took this up with... I discussed it with Mr. Perez and I don't believe the committee has any objection.

Mr. Gravel Tell Mr. Perez I support this.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Champagne], on page 5 delete lines 9 through 13, (this has just been passed out, just is being passed out I believe)... both inclusive in their entirety (and you need to insert) and strike out Convention Floor Amendment No. 1 proposed by Delegate Gravel and just adopted, and insert in lieu thereof the following: "(G). No constitutional office or the powers and functions exercised by it shall be affected by the provisions of this section."

Explanation

Mr. Champagne This is merely an attempt to say in concise words what Section (G) would attempt to say but I have no... but I have my reservations that

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Mr. Gravel Absolutely, Senator.

Mr. De Blieux So...I'm afraid of that.

Mr. Gravel That's correct.

This is just not broad enough in one respect, and in another respect it's too delimiting because it relates only to the...Section 8. I urge the defeat of this amendment.

[Previous question ordered.]

Closing

Mr. Champagne Mr. Chairman, fellow delegates, as I drove to this convention this morning I tried to reason with myself what was going wrong in this convention. As I sat through the deliberations yesterday, not necessarily today, I was reminded of an assertion made by a member of this convention. It ran something like this: 'A rose is a rose and smells as sweet by any other name.' Those of us who know little about roses, but know much about work, I would suggest: 'a spade is a spade and so it should be called.' As I sit through this convention, I get the impression that this body is attempting to call a spade an instrument with a handle. On one hand we described it so as to imply it resembles a coffee spoon. On the other hand, we describe it so as to imply it is a steam shovel. They are both instruments with a handle. I suggest that we are grown men and women and that in the future we attempt to call a spade a spade. I thank you.

[Amendment rejected: 21-76. Motion to reconsider tabled.]

Amendment

Mr. Poynter Delegates Tate and Dennis send up amendments...Dennis and Tate, in that order.

Amendment No. 1, on page 5, between lines 13 and 14, add the following: "(H). Notwithstanding any provision of this Article to the contrary, the courts and their officers may be established or affected only as provided in Article V of this constitution."

Explanation

Mr. Dennis Mr. Chairman, fellow delegates, this is the amendment I mentioned earlier, and the reason I'm offering this is as follows: First of all, in the Judiciary Article, we vested the judicial power of the state in the Supreme Court, the court of appeal and the district courts and such other courts as are authorized by this constitution. Now, here in the Local Government Article we're authorizing local government subdivisions. Now, the question is, does that include courts or not. The article doesn't say. I'm afraid that the popular conception is that a city court or a parish court is part of the parish or city government rather than the state government. If this is so, then a local government charter could create any number of different kinds of courts other than those that we envisioned in the Judiciary Article, because in the Judiciary Article we said you can have other courts authorized by this constitution. So in this amendment I am simply making it clear that the courts and their officers...officers may be established or affected only as provided in Article V of the Judiciary Article. Ladies and gentlemen, I ask you to vote for this because if we don't do this then I think we might be undoing the most significant reform that we arrived at in the Judiciary Article which was to empower the legislature to move toward a more consistent court system below the district court level throughout the state. If we don't have this, then the Local Government Article might be interpreted to say that regardless of what the Judiciary Article says, you can have any kind of court you want, whether it's different, inconsistent or what, so I ask for you to adopt this amendment, please.

Further Discussion

Mr. Perez We see no objection to the amendment. Again, we're just trying to make it clear that we're trying to provide a method for local government not to intrude into these offices or other functions of government.

Question

Mr. Schmitt Mr. Perez, do you see any necessity of putting all these various offices listed in there, and how far should we go? Should we list constables and...you know...to what extent should all of these offices be inside of the constitution?

Mr. Perez Mr. Schmitt, what I'm basically trying to do because, of all of the discussion we've had for the last couple of days on this article, I wanted to be abundantly clear. First, as far as I am concerned, the article would not have intended to do that. But in order to satisfy any of the arguments or fears that any of these persons have had with regard to these offices, I'm agreeable to go along with it for that reason.

[Previous question ordered. Amendment adopted: 96-3. Motion to reconsider tabled.]

Amendments

Mr. Poynter Before I get started reading, this is the Kelly amendment. There were two Kelly amendments that are rather comprehensive in their nature. This is the one that has Paragraphs (A) through (F) on it. I want to make it clear at this time. The second amendment needs to be changed in such a fashion that it only strikes out through line 1, on page 5. Therefore, the amendment would have the effect of not striking out the present sections or Paragraphs (F), (G), and (H) just added by the Dennis amendment. Now, I'll read that when I get along to it. It will result in the fact that we'll probably...if the amendment's adopted, we'll need some style and drafting changes because we'd end up with two Paragraphs (F). But the intent of the amendment is to not delete the Sections (F), (G), and (H) just added by way of the Dennis amendment. Those three paragraphs will remain. The intent is, however, to delete all of (A) through (E) of the section, including all amendments to (A) through (E). All right.

Amendment No. 1, on page 3, delete lines 22 through 32, both inclusive in their entirety, and if it's alright with you, Mr. Kelly, I'm going to add, including all floor amendments thereto, and insert in lieu thereof the following:

"Section 8. Home Rule Charters.

Section 8. Paragraph (A). Except as may be inconsistent with the provisions of this constitution, any local governmental subdivision or contiguous subdivisions may draft, adopt, amend, or repeal a home rule charter.

(B). A proposal to adopt, amend, or repeal a home rule charter may be made by the governing authority or by petition of at least ten percent of the electors or ten thousand electors, whichever is the lesser, of the governmental subdivision or subdivisions affected thereby, except as otherwise provided in existing home rule charters.

(C). Two or more local governmental subdivisions situated within the boundaries of one parish may avail themselves of the provisions of this section, provided that a majority of the electors in each affected local governmental subdivision who vote in an election held for that purpose, vote in favor thereof.

(D). Such proposals shall be filed with officials having charge of elections and with the governing...shall be filed with officials having charge of elections and with the governing authority. It shall fully set forth the proposed charter, amendment or other proposal. The governing authority shall provide by ordinance that the proposal shall be submitted to the governmental subdivision or subdivisions not less than sixty days after its passage or if requested in the petition, at a special election held not less than sixty days nor more than

Any such charter, amendment or repeal shall become effective upon the approval of a majority of the electors voting in the governmental subdivision or subdivisions affected thereby.

(E). The legislature shall provide for the method of appointment or election of a commission to prepare and propose such charter or charters.

(F). The legislature shall not pass any law which changes or modifies either the structure or organization of any such local governmental subdivision which operates under a home rule charter except as otherwise provided in this constitution."

Now, Amendment No. 2 needs some significant changes. "On page 4, delete lines 1 through 32, both inclusive in their entirety, and on page 5, delete line 1 in its entirety including all amendments thereto.

Again, it only deletes the first line on page 5, thereby having the effect of leaving in the proposal present Paragraphs (F), (G), and newly added (H).

Mr. Chairman, ladies and gentlemen of the convention, it seems like, as has been said up here before, that we've reached an impasse. What I have tried to do here is to try and come up with a reasonable solution. It may not be the best one...for any one side of this particular argument. But I think this is an amendment which everyone can live with.

To briefly go through the amendment and to try and explain to you what, in effect, it does in relation to the committee proposal, I will simply refer you to Mr. Roemer's amendment yesterday. Section (A) under the amendment is the same statement that was in that particular amendment. Section (B) is the same with the exception of one change, and that is, instead of the "ten percent or the ten thousand electors," we have made an exception "as otherwise provided in existing home rule charters." "Cause it is my understanding, or in fact, we're just not sure at this particular time as to the percentage that is required in some existing home rule charters. This exception would take care of that. In other words, this constitution would not mandate a particular percentage onto an existing home rule charter, that is not in their particular charter at this time, and make a significant change as far as the amendment or a repeal of that particular charter.

Section (C) handles the situation set forth in (D) of the committee proposal which takes care of where "two or more local governmental subdivisions situated in the boundaries of any one parish can avail themselves of this particular provision." I've talked with several members of the Lafayette delegation and some other parishes and municipalities that are involved in this, and they feel that this is absolutely necessary in order to take care of a particular problem in their area.

(D) is nothing more than the means and method of filing and setting up the charter, which was included in Mr. Roemer's amendment yesterday.

Now (E) is the executing part of the amendment, which says that "the legislature shall provide for a method of appointment or election of a commission to prepare and propose such charter or charters."

(F), I think, gets to the problem which possibly has been one of the major problems involved in this particular section, and that is the, excuse the expression, probably the gut issue of the home rule.

I think it does no violence to this particular section. I will explain this in the manner that in Section 9, which is the home rule charter, it is going to set up and effect home rule charters. I think it is obvious that in Section 9 and in Section 16 we get involved with what are some of the powers, functions, and exceptions to these powers and functions that are dealt with. But I see no reason at this particular time to tie that up into Section 9.

Section (F) of this amendment will not do that. It simply says that "the legislature shall not pass any law which changes or modifies either the structure or organization of any such local governmental subdivision which operates under a home rule charter

except," now this is the key to this thing, "except as otherwise provided in this constitution." Now there is apparently going to be some battles fought concerning Section 9 and Section 16. But Section (F) does not close the door, as far as that battle. It just simply says that the legislature shall not pass any law changing or modifying the structure and organization of a local home rule charter, except as may be otherwise provided in this constitution. Now, there may be some exceptions involved in Section 9, and I'm sure that the wording of Section 16 is correct, there will definitely be some issues involved there concerning exceptions.

As was pointed out by the Clerk, this amendment does no violence to Section (F), on page 5 of the committee proposal. It does no violence to any amendments that have been offered to that section. It does no violence to Section 6 as it's been amended. It's my understanding that Mr. Denney's amendment which has added a Subsection 8, it leaves that intact...Dennis? Judge Dennis, then. I think this is something that, as I say, is in the form of a reasonable approach to the situation. I'm not saying that it will cure nor will it forbid some issues which will have to be thoroughly discussed when we get to Section 9 and Section 16. However, by adopting this amendment, what we can do is when we get to Section 9 and 16, we can go on and meet those issues head-on and dispose of them at that time.

I ask for your favorable support.

Questions

Mr. Burns: Mr. Kelly, I notice you have two amendments here. Does this one take the place of this one, or are you going to present both of them?

Mr. Kelly: Yes, sir. I am in fact presenting an amendment which will not supersede the one I listed (A) through (F).

Mr. Burns: The one you are discussing now?

Mr. Kelly: The one I am discussing now, yes, sir.

Mr. Burns: One other question, is there any reason for leaving functions and powers out of that Subsection (F)?

Mr. Kelly: Yes, sir. Because I think that the functions and powers, I think those are inherent within the home rule charter. I think that's the guts of the whole thing, Mr. Burns. In other words, you are talking about structure and organization. When you've got the powers and functions...I meant if the home rule charter is adopted, it is my understanding that that is the power, at that particular point.

Mr. Lanier: Is it not a fact, Mr. Kelly, that the purpose of your amendment is to take out all of the provisions of the local governmental constitution proposal dealing with the powers of home rule units?

Mr. Kelly: No, sir. I don't think so.

Mr. Lanier: If I have dealings to give somebody that power, is that not correct?

Mr. Kelly: Well, sir, I think that's the question. Anything which says anything about the powers. But I think that's the question that we're dealing with. (F) of your constitution proposal, that's the powers and functions and the functions and powers that are inherent within the home rule charter. I think that's the guts of the whole thing.

Mr. Lanier: Well, Mr. Kelly, I think that's the question. If I have dealings to give somebody that power, is that not correct? As presently written.

Mr. Kelly: Yes, sir. I think that's the question. If I have dealings to give somebody that power, is that not correct?

Mr. Lanier: Yes, sir. I think that's the question. If I have dealings to give somebody that power, is that not correct? As presently written, a home rule unit would have no powers.

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Mr. Kelly Well, I think the power is inherent with in the home rule, Mr. Lanier. I don't think that we have to spell out in Section 8 the specific powers and duties. I think that what we're talking about, I think it's a normally known concept when we are talking about a home rule charter. It means just what it says. Now I agree, I'm no local government expert. But at the same time, that was my basic understanding of the situation.

Ms. Zervigon Mr. Kelly, would you explain again the purpose of your Section (C)? Let me clarify my question, perhaps. If the legislature shall provide the method of appointment and election of commission and how to prepare and propose such a charter or charters, why do you need the preceding three or four paragraphs?

Mr. Kelly Well, I think that by adding or injecting Section (E) in there, we make the home rule charter concept self-executing. In other words, as opposed to the legislature sitting back concerning a commission, as far as the preparation of the charter, etc., it would be a "may" situation, or it would be left entirely...the legislature wouldn't necessarily have to act. I think we have mandated them to act in this particular case. I think this is a safeguard to see that once the application, etc., is made for a charter, that the legislature will see, and provide the mechanism, that it will go on and be enacted.

Ms. Zervigon And you don't think that's already taken care of in (A), (B), (C) and (D), the mechanism of how that is going to be taken care of, when you say that you give the names to the people in charge of elections, and you've got to put an ordinance on the ballot and that sort of stuff?

Mr. Kelly Mrs. Zervigon, it may well be taken care of but I didn't want that was a serious question by some of the local government people and I didn't want to leave that question unanswered. I wanted to make sure that that was in there and that the legislature couldn't sit back and not take any action and prevent someone from obtaining a home rule charter. That's the only reason it's in there. Now whether or not it might be extra verbiage, I don't know.

Ms. Zervigon No, it...the thing that worries me, did you know, is that it may contradict the preceding four paragraphs.

Mr. Kelly Well, I think when we are talking about...I think in Section (D), we are talking about the means whereby the petition would be filed, etc. In (E), we are talking about the commission which is going to prepare and propose the actual charter itself.

Mr. Toomy Mr. Kelly, in Subsection (C) in regards to two political subdivisions within one parish, your amendment requires the majority vote of each political subdivision. But as you know, it's the last sentence you have in Subsection (D), just says that "a majority vote of the electors voting in the governmental subdivision or subdivisions." As I understand it, two parishes could adopt the home rule charter by a majority vote of the two parishes together and not each parish?

Mr. Kelly Let me say this, Mr. Toomy, I think the intent, when you are talking about what is concerned with two or more local governmental subdivisions applying for charters, etc., that would be covered by Section (C). You would have to read (C) in connection with Section (D).

Mr. Toomy As I read (C), it says "two or more local governmental subdivisions within the boundaries of one parish." I'm talking about outside of one parish. Suppose two parishes want to adopt a home rule charter, you only require a total majority vote and not a majority vote of each parish.

Mr. Kelly Well, I think that's...

Mr. Toomy If you'll read the last sentence of Subsection (D) again...

Mr. Kelly Well, I think that could possibly be cleared up. I'm not sure whether that's even taken...that particular problem is even taken care of in the committee proposal.

Further Discussion

Mr. Tate Mr. Chairman, fellow delegates, I rise with some hesitation to express views on a subject on which I acknowledge I have no expertise. I am attempting to express the concern of a substantial minority, at least, of us, with the basic philosophical concept of the committee section as proposed and with the hope of raising certain questions which perhaps the proponents of the section can address themselves to. I want to say, first of all, I want to say first of all that I think the minority at least for whom I speak, believe in the concept of home rule as we see it. Home rule is like motherhood. We want home rule. We do not want the legislature to interfere with the local structure of a charter adopted by the people of a certain area. I want to say further that I, for one, admire the work of the committee on Local and Parochial Government. I think they have presented to us a well-drafted and philosophically synthesized concept. My reservations, unfortunately, go to some sort of basic philosophical worry, and questions I want to raise. I want to acknowledge, also, that perhaps you're listening to a man who has been in state government for twenty years, and some of those others of us are worried about problems we see which you, looking to the future, may properly think are not the problems we feel, or based on our experiences in the past.

Now I was particularly impressed, for instance, with the delegate from New Orleans who pointed out, and the delegate from Lafourche, who pointed out how ridiculous it is that we have to go to the legislature to get mosquito control provisions, and fireworks provisions and obviously, that is a strong point.

But on the other hand, these, and we all think that within reasonable limits, local government should be able to act on matters of substance. But there is the issue. What is the responsibility? What protection do the citizens of this whole great state of ours have in the event, that in the event, that any particular local government exercises to the fullest the powers that we may vest in them by this constitution. I want to point out again, as a matter of mechanics and preliminary, that by Section 7 we protected Jefferson, Orleans, East Baton Rouge, those existing home rule charters. And we are looking forward to the future in this present section, Section 7, this is Section 8. But we do not know that in the years to come there might be thirty, forty, sixty-four, a hundred home rule areas and it's with that...regard to that problem, I want to bring up certain questions. Incidentally, on the mechanics, I think we can work out the mechanics. The mechanics right now of home rule are provided by statute.

Let me point out some problems. We are vesting in them complete discretion over criminal law except for felonies, and not inconsistent with general state law...not denied by general state law. As I lit a cigar this morning, it occurred to me tobacco does more harm than whiskey. Some good, clean-living community might very well want to make the possession of tobacco a misdemeanor, might want to say we can go the limit...two years in the parish prison. Who could say, incidentally, that that was wrong? If the legislature didn't do it, from place to place. Wrong except the legislature...representing on balance, a great number of people, we know would balance out the local prejudices and come up with a more sensible rule. I thought about, even under the present system, without the highway powers, the various little...one great state highway has various little different speed limits, do it, from place to place. Admittedly, one by one, the legislature could cure these problems by general law saying, "No municipality shall prohibit the possession of tobacco." Perhaps...and it would take care of it eventually.

misdemeanor, conspiracy to raise the price of goods by conspiring together to raise wages. Well...we might need a state law on that. A home rule community may, and I understand it may be a problem in some states, have no authority to raise the minimum fire standards. Each home rule area could have fire standards which, so long as they were not inconsistent with, even though they were greater than, might very well and might justifiably be a matter of local regulation, but it is not so with regards to a patchwork of ordinances, including bad ones, and satrapies over this state of ours. Now, I do not have to refer to you very far in the distant past, to the misuse of misdemeanor statutes to deny the expression of views on constitutional issues in the streets, or to the use of the same to deny the vote. It leaves no imagination in me to devise, to figure, ways that local instrumentalities, including my own beloved city, could, in expression of our own individual majority views, devise misdemeanors to inhibit the expression of views or to deny the vote. We are outside our area but who are citizens of our great state who happen to be within our boundaries. Those are the questions, the limits, the reasonable limits that we are vesting in these home rule charters. These are the questions that concern me, and it perhaps.

Mr. Schmitt This amendment is a bad amendment. This amendment attempts to do in one fell swoop what we have fought so hard to preserve in the other sections of this provision. The philosophical question before us, I think, is the one which Judge Tate has brought up. Does the local government have to recognize rights of the legislature before they are granted or, is the state obligated to restrict the abuse of these rights?

I think that the local governments must be given autonomy. They must be given the rights and the responsibilities which are inherent within the concept of home rule charters. Therefore, I favor the latter of these philosophical views.

The question of whether local government autonomy or state control should be the most important issue is clearly brought out by Subsection (f) of this amendment where it states that "the legislature shall provide for the method of appointment or election of a commission to prepare and propose such charter or charters." Let me tell you, you allow me to be the one who determines who sits on any commission and I will determine how that commission shall propose and what section shall be in that particular charter.

Of course, right now we are looking upon a legislature which has improved drastically over the legislatures of our past. Of course, we have a lot of respect for our present legislature. However, I think that the issue that I want to bring before you is the question of whether or not we want to give local governing authorities the rights and the responsibilities of governing and supporting themselves. Later, we will be presented with an issue with reference to granting local governing authorities the exclusive right to administer taxation and curbing the state out of the ad valorem tax business completely in favor of this. We have brought this up in our particular committee, and our committee Revenue, Finance, and Taxation, is pretty well divided on this. But my basic belief is that with every right goes a responsibility, and if we are going to give the local governing authorities the responsibility to run themselves, you have to give them certain rights.

"I guess so."

talking with him and I'll just quote you, while we are talking about constitutional revision, he says that "the central problem in state constitutional revision, generally, is the strengthening of the basic institution of representative government, namely, the state legislature." That these comments that you made concerning the legislature and the autonomy that Mr. Fordham has indicated, and he is known as the father of local and parochial government, that we ought to not talk about necessarily deleting the legislature from some of its inherent problems.

Mr. Schmitt What's your question? I don't understand your question.

Mr. J. Jackson Did you know...did you know that Mr. Fordham, contrary to what you said about the legislature, has advocated strengthening of the legislature?

legislature, but at the same time, you have to reserve certain rights to the local governing authorities.

Mr. Lanier: were you aware, Mr. Schmitt, that in this same communication referred to by Mr. Jackson that Jefferson Fordham said, "what I hope that the committee will consider is the recasting of the draft in simple, brief, broad terms such as have been attempted in my model provision for a model state constitution?"

* Schmitt No, but I believe that would help support my position in opposition to this amendment.

Lanier: Right. But you know what the...are you aware that the model state constitution provides as follows: "Powers of counties and cities. A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties or cities in its class, and is within such limitations as the legislature may establish by general law." This...

Mr. Kean Mr. Acting Chairman, fellow delegates, I'd like to talk initially about some of the technical problems that I see with this particular amendment. Mrs. Zervigon has already touched on one of the problems that this amendment raises.

which brings about the philosophy of residual powers.

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(F), which Mr. Kelly retains, refers to other powers granted in this constitution. Now if we delete the Committee Proposal (F), and retain only the Section (F), or Subsection (F), and Section 9 is emasculated or deleted, then I say to you that the home rule charter established under the provisions of Section 8 would have no authority, in my opinion, and it comes back to the same point that I argued against insofar as Mr. Roemer's amendment was concerned. If we delete the Committee Proposal, then we end up, we end up with no authority for home rule charters if Section 9 is emasculated or deleted, and I think we must understand that significant change that his amendment would make in the committee proposal.

I'd like to address a few remarks with respect to the comments Judge Tate has made. Judge Tate has talked about the possibility of many different ordinances that are being adopted in many different municipalities throughout the state. I think Judge Tate well knows that the municipalities of this state presently enjoy the right to exercise police power, and that under those circumstances, they have enacted police power regulations which may differ, right or wrong, from community to community; may differ as to the penalty which is provided for a violation of those police regulations. And under those circumstances, there is no great difference between the rationale with respect to the exercise of the police power now and the right to exercise the police power under the Committee Proposal. In both instances, as Judge Tate must well know, the test in the final analysis for a decision by the courts is whether or not the ordinance as enacted constitutes reasonable legislation. If it is held to be unreasonable, it is invalid, and I don't see that we have any great difference in that regard under the situation we have. I have it now, and such as would be the case under the committee proposal. I think the fears which Judge Tate refers to are meaningless. I think that we are talking about a concept here which would give to the municipalities the flexibility, the parishes the flexibility, to carry out their functions. I urge your defeat of the amendment.

Further Discussion

Mr. Roy Ladies and gentlemen of the convention, and Mr. Acting Chairman, I rise in support of this particular amendment, although I think it's the very weakest type of compromise that I see that has ever come about on this floor. About twenty-two years ago I attended Pelican Bay's State. I'm sure like many of you attended maybe in the past, I remember us getting to a position of not being able to compromise. There were kids from the various parts of the state, mostly the cities, who started running the whole Pelican Bay's State matter. There was one kid from Shreveport, and Mr. Jack, he's a member of your family, this was his little brother. He got up one day and he destroyed the whole notion that we couldn't compromise and that everything was fixed and rigged at Pelican Bay's State. I'm afraid that's the point that we've reached here. I'm sick and tired of people making comments about the governor of the State of Louisiana who has a great interest in this entire Constitutional Convention. He was the first man with enough guts in fifty-two years to dare to put a bunch of independent delegates in Baton Rouge for the purpose of trying to rectify the wrongs that the 1921 Constitution imposed upon the people. For one person to set himself up as somebody in authority to restrict the governor who has the input of everybody in this state, I think is ludicrous, and I'm tired of it. I'm sure he's talked to many people all over the state about what needs to be done, and to criticize the governor for getting involved to some extent in the various rights, I think is wrong. Now, what's wrong with Mr. Kelly's amendment? Mr. Keane keeps getting up and saying things like Judge Tate didn't know what he was talking about, essentially. Well, I'll tell you that in the case of LaCombe v. The City of Alexandria, the Supreme Court of Louisiana has ruled that when the legislature deals with a particular area of the law, the municipalities may not give or deal anything in that area that is more stringent. That's

the reason that Mr. Kelly has in here the particular provision that, with respect to powers and functions, that the legislature by general law may deal with its municipalities. 'Cause what Justice Tate said is true. But, let me give you a better example. Suppose the city of New Orleans under its home rule charter decides that everyone must register all firearms, all firearms, and that when you come into the city of New Orleans if you have a shotgun in your car, you must register it. You have one going on a duck hunt somewhere and it's not registered. The first thing you know, you're in jail because it's a misdemeanor. I made it...the next year, the legislature says "No, no boys, we don't want you all to do those things." But the fact of the matter is you are already in jail. Now, let me tell you what the cities can do. They keep talking about there's no general law that allows cities to perform certain powers and have certain functions. If you'll come up here, Mr. Gene Tarver, I'm sure, will be happy to show you Revised Statute 33:401 which deals with the general law called the Lawrason Act. There are one, two, three, four, five, six pages, six pages are one, two, three, four, five, six pages, six pages of model provisions and he model state constitution that they may choose at any time including even the consideration of what to do with privies, and vaults, and cesspools. That's how broad it is. Now, let's talk about Mr. Fordham's letter that Mr. Lanier asked about. I've got a letter from Jefferson Fordham, he's they guy they say is the expert. Dated September 10, 1973, it's addressed to Gene Tarver, Research Coordinator, who was the Research Coordinator for this particular committee. You know what he says on page 2? He reviewed the committee proposal. He said, "What I hope that the committee will consider is the recasting of the draft in simple, brief, broad terms such as may have been contemplated in my model provisions and he model state constitution." His last paragraph says this: "I am emboldened to say that the central problem in state constitutional revision, generally, is the strengthening of the basic institution of representative government, namely, the State Legislature." What are we doing here today, according to this committee and what it wants? We're trying our hardest to do away with the State Legislature. My provision that I have up there, my amendment...

Further Discussion

Mr. Abraham Ladies and gentlemen, when I first received this proposal, the first draft, I read it and studied it. We got the final proposal. I was undecided just what a lot of this would mean, particularly this Section 8: how far we wanted to go with it, how far we wanted to go with home rule, what should be the rights of the local people, what should be the authority of the legislature. For the last few days we've been deliberating this, and I've sat and I've listened to all of the arguments, and I've done a lot of soul-searching. It wasn't until last night that I really became convinced in my own mind of what should be done. The real question here is whether we want home rule that will encompass all the authority needed that's not necessarily...that's not decided by the legislature, or whether we only want home rule where it is permitted by the legislature. During the discussion of the Legislative Article, we said we wanted a strong legislature, but I remember many, many people getting up here and talking about restricting the powers of the legislature; that we couldn't trust the legislature to do this; we couldn't trust them to do that so we had to restrict the powers. During the debate on the Bill of Rights I heard many people come up here and talk about the rights of the people. The people wanted to reserve to themselves as many rights as they could. They wanted to be...they wanted to determine their own fate. So, now we get down to just how much do we mean when we talk about rights of the people; how strong do we want the legislature to be; how much do we want to restrict them. I became convinced in my own mind that one of the best ways that the people can assert their rights is by doing so at home. We're talking about grass roots politics now. I think that the people can do more good; I can do more good in determining my fate by

ing my views much easier than I can come to Baton Rouge and have to present them and have to argue with the legislature in order to get them to permit my local government to do certain things. Now, we complained many, many times about the rights of the state being infringed on by the federal government. We don't like it. We want the federal government to get out of the state's business. But, does not the same philosophy apply here; that when we start centralizing all of our power into a government we start losing our individual rights? So, why not keep the state out of the affairs of local government? Now, I don't get me wrong. There has to be some overriding checkrein, some overriding authority who will place some checkreins to be sure that everybody is not going out in left field. But, I became firmly convinced that we do more good when we keep our politics at home, and I am in favor of the provisions that are proposed by the Committee on Local and Parochial Affairs. I think Section 8 as it's written, while I may have some reservations about some of the language in it, I think it is basically good. We've put some amendments in there which I think improve it, and I think that our best bet is to go along with the committee proposal. Let's go ahead and close the debate on this issue. Let's vote on Section 8 and go move on to the next section and try to get this thing out of the way because we've got a long way to go. We've got a lot of work ahead of us. So, I urge the rejection of this amendment and any other amendments and the adoption of Section 8 as proposed by the committee, and let's move on with our business.

Question

Mr. Bollinger Mack, did you know that I agree with you wholeheartedly?

Mr. Abraham Thank you.

Further Discussion

Mr. Hunez Mr. Acting Chairman and fellow delegates. Besides the fact that this amendment, in my opinion, is essentially the same as all the other amendments that deal with this subject that we've defeated for the past three days, and besides the fact I think we've been on this provision three days, going over and over the same thing, I want to bring out something to you that I think is vitally important to the various parishes of this state. Vitally important from the standpoint that the parishes of this state over the years, over the past fifty years since they've been parishes have jealously guarded their parish boundaries. I speak from experience when I tell you that everytime we get a particular piece of legislation allowing a parish to extend one boundary into another, it becomes a very heated discussion and subject to much debate, subject to much deliberation. It always leads to some strong feelings amongst the various parishes. There are a number of municipalities in this state, I'm sure, would like to extend their parish boundaries. If you read this article very carefully, if you read it very carefully and follow it, I'm not going to go through it, but it just says in (A) and I'll quote, "from contiguous subdivisions," which means parishes that adjoin each other. Go down in Section... in (B), and says "at least ten percent of the electors sign a petition and present..." at least ten percent in either parish. Go down in Section (C), "Any such charter, amendment or appeal shall become effective upon the approval of a majority of the electors voting in the governmental subdivision or subdivisions affected thereby." Now, the way that reads to me, that if a parish wanted to take in another area, and those people in the other parish did not want that to happen, and the bigger large area would vote to do it over the smaller

parish, it would be a problem. I think it's a problem because if I can think of one thing, if I can think of one thing that would literally kill it with a nickel ad, it would be this provision. It would be this provision that would allow one parish to absorb another with just a simple majority coming out of the electors, out of the voters that vote in that election. I think it's a very dangerous thing we have here. I don't think it's going to pass. I hope it don't, I hope you kill it. But, I want to bring this to your attention because I think it does. I think that we actually do if we pass this amendment as is, that we actually set up a mechanism whereby groups of people can fight this thing, justifiably so. I'm not going to tell you that if you change that, I'll be for it. I've got up here time and time again and told you that I am for a strong home rule charter. I am for a strong home rule charter that would give the legislature more time to operate on legislative matters and not on local government matters. This does not do that. It does not do it, and the only provision that I've seen so far that did it is the constitutional provision that the committee has recommended to you. I want to say one more word because it seems like we are all saying we should give the power to the legislature. We should... that power that's delegated to them. I would tell you that the legislature has a tremendous amount of work that is being taken up by those powers that you are giving them, that are negating the work that they should be doing, negating the work that we should be doing when we vote on a one billion dollar budget. Would you think about that? I've said this before up here, that we passed a billion dollar budget in a matter of three or four days and we argue sometimes whether a parish should have ambulance service for longer than that--three or four hours--I'm sorry. So, I think when we... if we pass this, we do it the way that the proponents of this amendment want to do it. That we're not giving the legislature more power to do their job, we're giving them less time. Time is what we need to do the job we should do. So, I would ask you to oppose this amendment based on the fact that it isn't true home rule for the parishes, and based on the fact that it goes a lot further, a lot further than any other amendments that have been before you in doing the things or outlining the procedures whereby boundaries could be changed by simple majorities of the voters in the area voting, not those in the individual parishes.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of this convention, we are dealing now with a most important subject matter, and I would hope that I could have your attention. This is probably the worst of all of the amendments that have come before you, and for two principal reasons. It's a lengthy amendment and I hope that you would bear with me and follow the wording so that we can understand what it is. It is a very long amendment, and it is a very long amendment, but also contiguous local governmental subdivisions may, through the means of a home rule charter, consolidate. If you would look at Section (B), it provides that "ten percent of the electors or ten thousand electors, whichever is the lesser," that this proceeding could be initiated. If you would go down to (D), "Such proposal," that is a proposal either by ten percent or ten thousand, whichever is the lesser, "shall be filed with the clerk having charge of election" and so forth. It is a proposal, "shall fully set forth the details of providing a home rule charter." It is followed is either for the election of a commission of a commission for the purpose of providing a home rule charter. It is followed is either for the election of a commission of a commission for the purpose of providing a home rule charter. It is followed is either for the election of a commission of a commission for the purpose of providing a home rule charter.

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ly with the petition which is filed for a charter. Therein lies a fatal error with respect to this particular provision. But, going back again and remembering that it will...it is...will not only apply or cannot only apply to one local governmental subdivision, but to contiguous subdivisions, local governmental subdivisions, what this means is that ten thousand or ten percent of the voters of those two subdivisions could petition to consolidate through a home rule charter, the one large parish with one small parish. If you will look down at the end of Section (D), it says "Any such charter, amendment," etc., "shall become effective upon the approval of a majority of the electors voting in the governmental subdivision or subdivisions affected thereby." Clearly giving the opportunity for the big guy to gobble up and eat up the little fellow. I do not believe that that is what the people of this state want, and I do not believe that that is what the delegates to this convention want. I strongly suggest to you that this is the worst of all of the amendments that have been submitted. I'll yield to questions.

Questions

Mr. Vick Mr. Perez, did your committee authorize the distribution of this letter from Jefferson B. Fordham of the University of Utah?

Mr. Perez No, sir. But, I understand it was distributed by Mr. Lanier.

Mr. Vick All right. The committee then does not endorse the comments made by...

Mr. Perez I really don't know exactly what's in the letter. I don't recall having read it or not read it recently.

Mr. Vick Did he appear before your committee?

Mr. Perez Yes.

Mr. Vick What I'm concerned with, Mr. Perez, is his suggestion that the ideal article should be brief and concise. As he says, and I quote, "What I hope is that the committee will consider in the recasting of the draft in simple, brief, broad terms such has been attempted in my model provisions in the model state constitution." Do you believe that has been done in this article?

Mr. Perez Yes, sir. I think that we have done in this article what must be done in order to avoid a multiplicity of future amendments to the constitution just as we have had over the last many years, to authorize parishes or municipalities to have constitutional charter forms of government. If we do not adopt a provision like this, I predict to you without fear of contradiction that we will have constitutional amendments after constitutional amendment in an attempt by these local governmental areas to have constitutional charter forms of government.

Mr. Flory Mr. Perez, I understood you to say that under the amendment there was a possibility of two parishes merging under a home rule charter under this amendment. Is that correct?

Mr. Perez Yes.

Mr. Flory Do you recall the language adopted by this convention in Section 1 that required if that happened, it takes a two-thirds vote of the electors in each parish to do that, you recall that?

Mr. Perez Yes, I recall it very well and there are two very distinct ways that it could be done. One provides that the legislature may consolidate, and it requires two-thirds vote of the people. This is one other method whereby it can be done; they are both exclusive one from the other.

Further Discussion

Mr. Willis Mr. Chairman and fellow delegates, if we are to avoid deception, we must avoid deceiving or being deceived. The essence of deception may be gleaned from equivocations. Attaching a peculiar significance to a sentence or section which it does not have, and doing so knowingly, is sinful. Doing it sincerely is ignorance. Knowingly deceiving is a form of tyranny over the minds of men. No conscience is lower than that which comforts itself for having deceived. A lie which is half a truth is the worst. Whoever utters those to you are what is known as fair weather friends. You'll find many of these in prosperity. In need or adversity, you'll find yourself alone, if you depend on their company for support. A friend to everybody and every cause is a friend to neither and only a source of inconvenience. Loyalty to that type of friend results in self reproach, and reproach from others also and a constant torment. A constitution is not an act of government. It is an act establishing government by its people. Our target is very obscure if we lose sight of that distinction between a law and a constitution. Local government sir, has sufficient powers, not only to discharge its duties, but also to protect itself, and to protect its people within the sphere delineated by a constitution. To direct local government to govern and serve, and to deny it the power to do so or to protect itself and its people within its proper sphere, is to expect water from a rock. The only time this happened in recorded history is about four thousand years ago with the help of God to the leader of the people journeying to the Promised Land. To tell me that one man unenriched at noon and during that hour can better contain and outline local government, or that on the spur of the moment within another hour nobles may all that likewise and better than the committee which laid this proposal before us, is to offend my credibility—when I think of the qualities, the qualifications and the sincerity of the members on that committee. Ladies and gentlemen, time marches on, and that is one thing that never returns. We will be begging for time in December. This amendment belabors all that which others did in substance or procedure. The results of which has compelled us to exercise in futility and waste the most important thing to us—time. If I could inoffensively move the previous question on the entire subject matter, I would do so. What I can do with impunity, however, is to solicit your rejection of this amendment, and all others which seek to destroy and gut home rule.

Questions

Mr. Roy Mr. Willis, I really enjoyed your comment about the deceit. I was just going to ask you that doesn't the first sentence of this amendment say "except as may be inconsistent with provisions of this constitution any local government may do such and such?" Doesn't it say that?

Mr. Willis I give you an "A" in reading and understanding what you read.

Mr. Roy Isn't that pretty clear that that's what it says?

Mr. Willis That's a question that answers itself. Mr. Roy. Why don't you give me a question?

Further Discussion

Mr. Arnette Ladies and gentlemen, I'm not going to say one thing one way or the other about this particular amendment because I think everybody knows my feelings on it, but I just want to get the issue before you very, very clearly. The issue is: Do you want your local government to go to the legislature any time they want to pass a law? It's very, very simple, or do you want to go with the committee proposal which allows the local government to do anything not denied to them, which is the way it is in a model state constitution, which is the way many people think it should be; but I just want to get the issue before you very clearly. If you want local home rule, you would vote against Mr. Kelly's

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... want to go to the legislature anytime you want to pass any laws in your local area, then vote for Mr. Kelly's amendment. It's very simple. If there are no other speakers, I would like to move the previous question.

Chairman Henry in the Chair

70-30. Motion to adjourn to 1:00 o'clock

stitute Motion to adjourn to 9:00 o'clock a.m., Tuesday, September 25, 1973. Motion adopted; 65-34. Adjournment to 1:00 o'clock p.m., Tuesday, September 25, 1973.]

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Tuesday, September 25, 1973

ROLL CALL

[68 delegates present and a quorum.]

PRAYER

Mr. Heine Our dear heavenly Father, we thank Thee for this beautiful day and for the blessings that Thou hast given us. Be with us now as we deliberate on the business of the convention and that the decisions that are made here will be for the best interest of the majority of the people of our state. Lead, guide and direct us now in everything that we do, and forgive us of our many sins. For Christ's sake, Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17, introduced by Delegate Perez on behalf of the Committee on Local and Parochial Government and other delegates, members of that committee.

A proposal making general provisions for local and parochial government, levee districts and ports, financing thereof, and necessary provisions with respect thereto.

The status of Committee Proposal No. 17 is that the convention has adopted as amended Sections 1, 3, 5, and 6 through 10 of the proposal, has voted to delete Sections 2 through 4. Presently, the next section that should be under consideration would be Section 9 dealing with powers of other local governmental subdivisions.

Reading of the Section

Mr. Poynter Section 9. Powers of Other Local Governmental Subdivisions

Section 9.(A) Any other local governmental subdivision may exercise..."

[Motion to waive reading of the Section adopted without objection.]

Explanation

Mr. Lanier Mr. Chairman and fellow delegates, Section 9 of the proposal of the Committee on Local and Parochial Government is the heart of the local government provision. This deals with the powers and functions of other local governmental subdivisions other than those which were considered in Section 7 and 8. Now in order to properly evaluate this concept of the balance of powers between our state government and our local government in making a determination of how local government and state government can best serve our people, we should considerate of certain goals and certain ideas of what we want to accomplish.

In this regard, we are indeed very fortunate that an extensive study was done in the State of Louisiana called Goals for Louisiana. It was chaired by Senator Michael O'Keefe of New Orleans. At the beginning, in the preface of Goals, we find the following language and want to quote it to you because I think it is significant in doing the work that we are here to do today. Senator O'Keefe said as follows, "Goals imply our dreams for the future, but the future has arrived. It is now. Some aspects are welcome; we air-condition our homes against the summer heat, view events around the world via satellite television, and program computers to tackle problems with lightning speed. Other aspects are alarming; our cities are festering with slums; we are told the air we breath is poisonous, and social discontent is manifesting itself in violence. The future is a mixed blessing. Blinking an eye or turning a deaf ear will not make the problems go away. There is no substitute for courage, imagination

tion and determination."

In our treatment of the local government provision, we have tried, as best we are able, to meet the problems of local government in the balance of interest between the state and local government with courage, imagination and determination. To go on into the study that was made by Goals with reference to local government, they have some very important observations and I would like to point them out to you so that you will be aware of what this group... this is a federally financed program, it was established by the Louisiana State Legislature in conjunction with the Council on Governmental Reorganization. With reference to local government they say this, and I'm not going to read the whole thing but just those parts that deal with the powers and functions of local government: "As the population of our state increases and becomes increasingly concentrated in urban areas, a fresh view of the role of local government is required. It is the committee's view that this fresh view calls for the strengthening of the capacity of the people to govern themselves at the local level."

In this regard they say this, "Self-executing constitutional provisions are urged which would enable the citizens of each community to frame their own local government charters." Well, fellow delegates, we have taken care of that in Section 8 that we passed last Saturday.

The other thing that they recommended was the following: "Similarly, such provisions are urged as will allocate to local governments all those powers desired by its constituents which they deem necessary to enable their local governments to meet and resolve their local problems. In this regard, with reference to the capacity of the goals as enunciated by the committee, we find the following under Section VI: "Local governments should be given genuine home rule status, including the responsibility, power and authority adequate to meet the increasing demands of modern society."

Number 1. Local government should have the right to initiate, adopt, and amend the form of their government. Self-executing constitutional provisions to accomplish this purpose should be adopted.

Number 2. Local governments should be constitutionally vested with all powers necessary to respond to local problems. Self-executing constitutional provisions to accomplish this purpose should be adopted. Any such constitutional provision should include admonition to the judiciary calling for a liberal construction of home rule powers over local affairs."

Now, if you agree with the conclusions of the Goals Committee, the next job at hand for us is to decide how best we can accomplish this purpose. In this regard, basically we have two alternatives, these are two contrasting political theories. The first is called Dillon's Rule. This is a political theory of local government that has been prominent in the United States with decreasing importance in recent years since 1868. Dillon's Rule basically says that "local units of government only have such powers as are specifically granted to them." If the power is not specifically granted, then the local government can not act within that sphere. Now the problem with Dillon's Rule is that, what authority you would need in say, 1900, to settle the Fordham problem might not be the problem you would need in 1925 or 1950. So you have to keep going back and back and back to the legislature to get additional authority to settle your problems on the local level.

The other approach to solving local problems is what's called the Residual Grant of Authority, and this is in conjunction with the so called Fordham Plan, although the Fordham Plan actually entails a little bit more than the Residual Grant of Authority. The concept of the Residual Grant of Authority is that the local units of government can exercise any power and function necessary and adjunct to the management of its affairs. Now this is not to mean that it is given state-wide power. It is given power for the management of its own affairs and it has this power unless limited by the constitution, by general state law, or by its own charter. This way, if some-

would have the authority to deal with the situation unless prohibited by state law or its charter or the constitution.

of the two alternatives that are available to you. There are various modifications of the Dillon's Rule and the Fordham Plan. For example: Under the Dillon's Rule, you could have a constitutional grant of power to a local unit. If you have this, this creates the so-called realm within the realm, the imperium in imperium; this is the so-called local governmental island. This constitutional grant of specific authority means that the legislature cannot affect in any way the activities of the local unit in that area. The other alternative under Dillon's Rule is a statutory grant of authority which is primarily what we are operating under today in Louisiana. You have certain constitutional grants with reference to the charters, the home rule charters which are presently in the constitution. The other authorities are by statute.

Now with reference to the Residual Grant of Authority. This could be done by a straight constitutional grant. However, most of the authorities in the field feel that the legislature should be given absolute right and control to control the powers and functions of these local governmental units. And that's why the language is used, "not denied in this constitution by general law or by its charter."

As you will note in reading Section 9, we have adopted the Residual Grant of Authority approach. Section 9 is intended to apply to those other local governmental subdivisions who are not counted in Section 8 and Section 7. They are granted the power... the right to exercise power and perform any function necessary, requisite, or proper for the management of its affairs not denied by its charter, by this constitution, or by general law." Thereafter, we have a certain list of enumerated powers which this does not limit the grant, but just enumerates certain powers that would be included within the grant.

Section (B) of the proposal provides that these powers can be exercised concurrently with the state. A classic example of that would be the criminal law. You could have a parish or a municipal ordinance prescribing against a type of criminal conduct, as well as a state law, and giving authority to the legislature to preempt or displace it, if it wishes.

In Section (C) we provide that this should not be construed to affect parish or city school boards, the offices of sheriff, clerk of a district court, coroner, or assessor. With reference to this I might suggest that we may want to consider doctoring this up a little bit to make it with the identical language that we used in Section 8.

This approach to solving the local government authority question has been recommended here in Louisiana by the Louisiana Constitutional Revision Commission; the Chairman of the Committee on Local Government was Mr. Roy M. Fish. There has been a very excellent discourse on this topic. It can be found in the books that were sent to you on Focus on CC'73 by Professor Lewis Newman of LSU. The approach is recommended by the U. S. Advisory Commission on Intergovernmental Relations in its paper entitled "Unshackling Local Government," and specifically I'd like to quote from that report. This was a 1966 report wherein it says, "Turning to governmental structure and the area of delegating residual powers to local governments. In order to prevent further judicial erosion of the powers of local government, states should, in their constitutions grant to selected units of local government all functional powers not expressly reserved, preempted or restricted by the legislature."

This approach is also adopted by the model state constitution which has recommended the residual grant of authority somewhat similar to that which we have adopted. We have had various people about the state

presented to us by the Louisiana Municipal Association and the Louisiana Police Jury Association. As best as my research can show, this type of an approach,

ten states.

Now, in reading Section 9, you must read it in conjunction with Section 12 which shows what limitations are intended to be placed upon this power. One is that a local governmental subdivision cannot incur a debt payable from ad valorem taxes maturing more than forty years; it cannot define or provide for the punishment of a felony, and it cannot enact a private or civil ordinance governing civil relationships. Now by civil relationships it is intended to mean the civil code, the trust code, the workman's compensation law and the various laws in our state governing civil relationships.

Section 9 also has to be read in conjunction with the limitations placed on local government finance in Sections 31 through 43.

In closing, fellow delegates, I'd like to point out to you that what we're talking about here is the right of the people on the local level to efficiently handle their own affairs. After considering all of the alternatives available to us, the committee felt that this system, this combination of Section 8 and Section 9 together was the most efficient way to accomplish this. This combines the best of two worlds. It combines the freedom and flexibility of movement necessary in a highly mobile society where we have mass transportation and mass media and everchanging concepts, with the idea of legislative supervision and control over an overall game plan on the state level.

Under this proposal, the legislature retains the absolute right... Under this proposal, the legislature has the absolute right to regulate the powers and functions of a local unit. Theoretically, under this approach, and this is one of the criticisms of it, the legislature could pass a law saying that the local government has the powers and functions except as hereinafter specifically provided." We felt that the legislature would probably not do that. We have felt that trust should be placed in the legislature. For example, I live in a town with a legislative charter and theoretically, the legislature could have passed a law wiping out our city charter. But I don't think that they would do that. On the other hand, we are asking you to trust local government to be responsive to the needs of its people and to govern them wisely and prudently. In this regard, I would like to point out that at the local level, the citizen has the best opportunity to make a change in his government. When it comes to voting for his Representatives and Senators, he might vote on maybe two repr... one Representative and one Senator. And that's not going to change very much in Baton Rouge. But on his city council and his police jury, he votes on a lot more than that and he can... we think it is a prudent and wise approach to this problem, and we offer it to you for your consideration.

At this time, Mr. Chairman, I would be glad to welcome any questions on this topic.

Vice Chairman Casey in the Chair

Questions

Mr. Roy M. Fish: I am very much interested about some aspects of your section and I want to ask you a couple of questions about it.

When you enumerate from line 20 on, in Section 9, the powers that are reserved to the legislature, we feel that this is a prudent and wise approach to this problem, and we offer it to you for your consideration.

Mr. Fish: I am very much interested about some aspects of your section and I want to ask you a couple of questions about it. When you enumerate from line 20 on, in Section 9, the powers that are reserved to the legislature, we feel that this is a prudent and wise approach to this problem, and we offer it to you for your consideration.

My own personal opinion is, Mr. Roy, that these

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things are included in the general grant of authority and that this list is merely illustrative. So if you'd like for me to state for the record what the intent of the committee was, it was not to grant uncontrollable powers to local governmental units. It was merely to illustrate certain powers that would be included in the general grant.

Mr. Roy I can appreciate that. But you know the courts would maybe decide in the future this thing, and the other problem that worries me is that on line 28, you do have and except as otherwise provided in this constitution", but it is restricted only to Number 7, which, if I were arguing, I would say that obviously the Constitutional Convention meant that only Number 7 would be restricted by that language and not the whole number of one, two, three, four, five, six, seven, and certainly that the legislature could not in any manner tamper with or modify those seven provisions.

Mr. Lanier When we first drew this thing up, I think we had had language something like "except as provided in this section" or something like that, because we do have provisions in our finance section that deals with this problem. My understanding of this language, when we put it in, was that it would be sort of a lead-in to the limitations that appear in the finance section.

Mr. Roy All right. One last question because I know other people have questions. On line 32, you exempt, by general law only those powers which the general law specifically limits, and I'm very much concerned that even a broad, general law passed by the legislature to deal with every type or category of conduct of all municipalities or local governments, that lawyers would get in fights as to whether it was specifically stated enough to deny or negate a particular source of action by some local subdivision. I'm wondering why you need to say "specifically limit"?

Mr. Lanier The problem with this is a little different that what you have posed, but I'd like to discuss both. If I'd be alright because there is a little problem here.

You have the problem here, the concurrent exercise and also the preemption. Language similar to this is found in the Illinois Constitution. If you will note, the language says, "any local governmental subdivision may exercise any power and perform any function concurrently with the state pertaining to its government and affairs." Now, of course, this is the point, that these powers have to be pertaining to its government and affairs. The same language is found in a little bit different status up above. On line 18 it says "for the management of its affairs, necessary, requisite, or proper for the management of its affairs."

Mr. Roy But it goes further.

Mr. Lanier This means that with reference to these powers that are necessary for its affairs, or for the management of its affairs, that it would...we've got to decide the old issue, and you, I know, are aware of this problem we have in the Federal Jurisprudence about when the constitution is silently silent or when it's actively silent. We wanted to get around that problem here by setting out specifically when the exercise would be concurrent and when there would be a preemption, 'cause you know how much litigation the preemption problem has caused in the Federal Jurisprudence.

Personal Privilege

Mr. Jenkins Mr. Acting Chairman and delegates... I had occasion this weekend to be in Washington, D. C. to attend a conference of state legislators and congressmen and something occurred that I thought would be appropriate to relate to you at this point in our discussion, because it pertains to local government, and it's not by way of debate, but it's by way of something I want to point out.

I met a state representative from Illinois, he's

a Republican representing the suburbs of Chicago. His name is Donald Trotten. I mentioned to him that we had a constitutional convention going on in Louisiana. I said, "You know many of us have looked at the Illinois Constitution and read it with some interest." Well, the first thing he said to me when I said we had looked at the Illinois Constitution was, he said, "Well, let me tell you this. When you get to local government in that constitution, you'd better be careful about what you do about home rule." He said, "The one provision that has caused more problems in the Illinois Constitution adopted two years ago, than any other, has been their provision on local government." Here's the problem that has been raised," he said. He said, "On virtually every bill that comes before the state legislature, there is a legal question raised as to whether or not that bill is going to have any effect, any validity, anywhere in the state." The question is raised whether or not it has been preempted by the local governments, whether or not, in effect, sovereignty of the State of Illinois has been alienated to the local governments. The legislature has given up something it can't even legislate in a given area. And then he started the horror stories about what has happened in counties throughout the State of Illinois. He pointed out, for example, in one county they used this wonderful power to attempt to license physicians, and operate concurrently, of course, with the state under this provision, just as under ours. This locality was trying to set higher standards, different standards. Another one was trying to set, to license real estate brokers, already licensed by the state. They were going to license real estate brokers. He went on and on and on...talked about people waking up in the morning and finding out that they had had some new assessment placed on them because of local improvement, without any knowledge or vote on their part. The point that he raised time and time again was that it wasn't working in Illinois...this wonderful plan of home rule, for one reason because it's not really home rule at all.

No given subdivision or its people is given the right to govern themselves in their own way. Rather, the only thing that they are given is the authority to enact laws to enact laws and controls and regulations. They can't take off anything put on them by the legislature, by congress, they can only put on more controls, more interference with the individual lives of their citizens. So I just want to point out at this juncture that this wonderful plan, wonderful scheme, that has worked...that was put into effect in the State of Illinois, is considered, at least by some of their legislators, not to be working. I think we ought to find out a lot more about it before we try to put it into our basic document in this state.

I can foresee a situation where business and labor, in particular, are facing an unmanageable political situation...right now they know they can go to the legislature to try to get redress, to try to correct injustice...Thank you.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Conroy]. On page 5, delete lines 17 through 28, both inclusive and insert in lieu thereof the following: "Shall have such powers as shall be provided by this constitution or by law".

Amendment No. 2. On page 5, delete lines 29 through 32, both inclusive and on page 6, delete lines 1 through 4.

Amendment No. 3. On page 6, delete lines 5 through 8, both inclusive in their entirety.

Explanation

Mr. Conroy As suggested by the committee in its proposal, this is one of the more important sections of the proposal of the Committee on Local and Parochial Government. But, the proposal of the committee radically changes the system of local government that we have in this state today. Section 9 of the committee proposal, as proposed, would delegate all residual powers to local government whether they

feel they are prepared for it or not. The proposed amendment, the amendment which I have submitted, would restrict non-home rule charter local governments to the exercise of powers granted by the legislature. Let me go over that again. In Section 7, we said that those that have home rule charters keep what they've got. In Section 8, we have said that those who want home rule charters can get them through the procedures set up in the constitution and will carry with them all of the powers that the people there want. Section 9 as proposed by the committee says that local government has all powers whether the people there want the local government to have those powers or not. I think it's fine what we have done so far, and that is to say that if the people want a home rule charter and want their local government to have all these powers, that they should have the right to vest those powers in their local government. I think it's wrong to say that the people do not have that choice but that they've got to have all of these powers passed down to their local government, to the police juries, to the towns, to the municipalities. I believe that's wrong. I think the people, the people is where the power ultimately rests, and I think they should have the opportunity to make this decision and to adopt home rule charters if they so wish and to have those home rule charters spell out the powers and functions that local government is to have. This is the purpose of my amendment. I've spelled it out in three amendments. It's actually Amendment No. 1 which does this and if Amendment No. 1 is adopted, Section 9 would read simply as follows: "Any other local governmental subdivision shall have such powers as shall be provided by this constitution or by law." Then, if they wanted to adopt a charter, as I said before, they go back to Section 8 and adopt their charter. If they have a charter, they go under Section 7. Section 7 and (C) of Section 9. Paragraphs (B) and (C) of this Section 9, I separately delete by Amendments 2 and 3. I have no great quarrel with Paragraphs (B) and (C). My only point is that once Amendment No. 1 is adopted, I think Paragraphs (B) and (C) are totally unnecessary. For that reason, it proposed to delete them by separate amendments, 2 and 3. I yield to any questions.

Mr. Conroy, I... Couldn't we, if we wanted to deal with Section 9 as they have attempted to do, we just should have made it part of Section 8 and have the same thing? Is that right?

Mr. Conroy Well, that's the effect of it is to say that whether you've adopted a charter or not, you hereby have a home rule charter but without defining what that charter is or what the limitations are that normally a group would intend to put in a home rule charter if it is locally adopted.

Mr. Roy Now, I am concerned with Section (B) for this reason. The way I read (B), it means that any home rule... any police jury, any political subdivision would have every power concurrently with the legislature and the only way the legislature could ultimately deny certain powers was to, in some way, and I don't know how they could do it, but pass a general law that would specifically limit this particular political subdivision to certain restrictions. Isn't that true?

Mr. Conroy It seems to be. I'm... the explanation didn't enlighten me much on Paragraph (B) when the committee presented it. I didn't understand it when doing that.

we have already had that hurdle and not crossed it.

ific political subdivision and not have that general ific matters?

gested would create an unwieldy burden for the legislature in its operation.

as a matter of fact, we could simply delete Section 9, could we not?

Mr. Conroy I think that that would be largely its effect, Mr. Kean. I think the only effect of having it in there would be to make, I think, a little clearer that the legislature could enact general laws that would cover the subject of local government, and to put it in proper perspective with 7 and 8 so that it's not just omitted altogether. I think for a better reading and more sensible presentation it would still be desirable in the constitution.

Mr. Kean But, despite that desirability, the net effect of it would be to bring local government substantially back to what it is right now with respect to delegation of powers, would it not?

Mr. Conroy No, I disagree with that because I think we gave local government a strong step forward with Section 8, that they have the option to move into whenever they wish. I think that that's a very significant thing we've done there, and I think desirable thing we've done. So... they're not back where they started from by any means.

Mr. Kean But, without going to the charter form under Section 8, they would be substantially in the same position they are now, if your amendment is adopted tonight.

Mr. Conroy That's correct. The people would be in the same position, with the people having the option to adopt a home rule charter if they chose.

Chairman Henry in the Chair

Mr. Lanier Mr. Conroy, are you aware that places the people like to operate under a police jury system?

Mr. Conroy I'm sure that that's so, and I would think that it wouldn't be any great problem, if they so desired to maintain essentially that same system, is to draw up a charter that would increase the powers of the police jury and still incorporate it in... after which would then put them under Paragraph (A).

Mr. Lanier But, if they wanted to keep their present system, why should they be denied the power to administer their affairs as would a home rule charter unit of government that may be located right next door to it?

Mr. Conroy Because exactly... the parish next door don't want such powers invested in their police jury. So, in order to place the ultimate power in the people in each of these areas, I propose deleting this so that if they want the type of step you want them to take, they adopt a charter and invest those powers in the police jury.

statement in the Bill of Rights that we adopted that "all government of right originates with the people, is founded on their will alone, and is instituted in... quod of the whole".

that... It puts it back to the people to have this choice as to whether they want these sort of powers

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in their local government because under Section 8, they can invest those sort of powers in local government, and the power is ultimately with the people. I think Section 9, as proposed by the committee, takes that power away from the people and instead invests it in local government, whether the people wanted it there or not.

Mr. Lanier Mr. Conroy, let me ask you this...

Vice Chairman Casey in the Chair

Further Discussion

Mrs. Zervigon Mr. Vice Chairman and delegates, I rise in opposition to the Conroy amendments for two reasons. In the first place, we've made a very clear distinction between home rule units of government and any other unit of local government. That is, that if you write up a home rule charter, the legislature may tell you what powers and functions you may exercise, but not how to exercise them. In other words, it's like a football game. The rules are drawn out; how many players on each side and what's against the rules. The legislature could, within those rules, you set your strategy in order to try and win the game—that's home rule. For other units of local government, the legislature could tell them what to do and also how to do it, if they were of a mind to. But the reason we drew it so that they had any power not denied them is because we like the flexibility of it. The legislature could, with the enormous power that's bestowed upon them, take all powers and functions away from local government, if they so desired. But, as Delegate Triche made the point earlier on in this convention, it's become time for the people of Louisiana to grow up, trust their legislature, and trust themselves to watch their legislators, and the local governmental officials. So, the Local Government Committee has put in the legislature the power to deny any power or any function to a local government. If the legislature does not deny these powers and functions to the local government, the local government may exercise them. This is to stem the flood of bills that reach the legislature every year saying, "This parish may regulate fireworks. This parish may regulate livestock. This parish may regulate so and so," and have a crazy patchwork of statutes that apply to different parishes in different ways. Now, unless a power were being abused, the legislature would not have to act, and the legislature could turn its full sixty days, its full intelligence to solving problems of statewide issues. I urge your support of the committee proposal and the defeat of the Conroy amendment.

Questions

Mr. Goldman Mrs. Zervigon, I don't really... I didn't hear you when you started whether you said you were for or against this amendment, but it makes no difference. My question is apropos either way.

Mrs. Zervigon I hope it makes a difference.

Mr. Goldman Well, I mean, as far as my question is... My question is, as Section 9 is written now, doesn't it virtually give all those subdivisions that have no home rule charters, doesn't it give the elected officials of those, either parishes or municipalities, the ability to... in effect, make a home rule charter themselves without going to the people first to see if that's what they want?

Mrs. Zervigon Mr. Goldman, the answer to your question lies totally with the legislature. It depends how many powers and functions the legislature wants to deny those local governments. Those local governments will operate subject to the constitution and to general law. It's totally up to the legislature. The legislature could say that they may not pave streets, that they may not employ a fire department. The legislature could decide all of that. What we've done is to leave the flexibility with the legislature on that, but leave a certain body of residual powers with local government until the legislature says otherwise.

Mr. Goldman But, couldn't a local elected body do something, pass some law that the people didn't want, and the legislature is not in session, it would be in effect until the next legislature gets in session; then, somebody would have to go to complain to the legislature for them to say "No, you can't do this?"

Mrs. Zervigon Well, Mr. Goldman, your argument assumes, or your question assumes, that elected local governmental officials who live in the area, don't leave the area, meet every week in the area, are essentially less responsive to the people who elected them than the legislature at large, the great majority of whom do not live in the area that you are talking about.

Mr. Goldman It's been known to be done, and I know I can give you some examples of some...

Mrs. Zervigon It's been known to be done by any elected body you can name. All virtue does not reside in the legislature nor does it all reside at local government. This is a counterbalancing effect.

Further Discussion

Mr. Avant Mr. Acting Chairman and fellow delegates, I rise to support Mr. Conroy's amendment. Now, I know it's high time we looked at this matter very closely. Now, we are here, at least so I understand it, to write a constitution, a proposed constitution for the people of the State of Louisiana. Now, as you have been told, not once but dozens of times from this podium, and as you well know, power comes from the people, from the people of the State of Louisiana. Traditionally and historically, the memory of the people runseth to the contrary. The legislature of the state has been the general depository of that power. Everything that is not prohibited to the legislature by the constitution, it has the residuum of power to accomplish in accordance and consistent with the provisions of the constitution.

Local government, traditionally a municipality, has been empowered on a grant of power from the legislature. Now, I respectfully submit to you that it is one thing to sit down and provide a method by which local governments on an individual basis may prepare a home rule charter through a procedure that is established for a commission or a committee or whatever you want to call it to draft such a charter, to reduce that document to writing so that the people can look at it and study it, and discuss it and debate it, and get some idea what it means and then vote on it, that is one thing that is entirely different from what this section proposes. Now, this section simply means in words of one syllable and not too many, that every single municipality or police parish or governmental subdivision in this state has unlimited power to do anything that it chooses to do unless that power has been specifically denied to it by the legislature, or it is specifically denied to it by this constitution because it has no charter. It would have no charter unless it's operating under some special legislative charter. Now, I respectfully submit to you that that is unwise. That is not sound. That's an entirely different proposition, as I've said before, from a home rule charter. Now, Mr. Jenkins used a phrase the other day that I think was well taken. That is, that the legislature is going to be engaged in the process of putting out brush fires all over the state. Mr. Jenkins, in discussing this matter with you earlier this day, pointed out some of the problems that you are bound to have, some of the problems that they've had in Illinois where they tried this system, because there's nothing in the world that would prohibit a municipality from licensing any profession, any trade, levying any tax, passing any kind of code, or doing anything under the world that its governing authority conceived that they should do unless and until the legislature passes some general law saying "No, local government, you can't do that." Now, I submit that the perspective is law, under this type of a proposition. Local government in this state has had no problem going to

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9 we are dealing with parishes which were not under home rule charters. In the others, we've been talking about parishes and municipalities that are under home rule charters. Now, in the previous sections when we granted all this tremendous power to parishes under home rule charters, we've done it with the understanding that that power would be granted to them only after a vote of the people. But, then here in Section 9 we come along under the committee's proposal, have under this concept, the same powers, exactly would be granted to all the parishes and municipalities, but there is time without a vote of the people. The thing about Section 9 is, it's anti-home rule; it's anti-home rule because it would say that the people of the parish don't have a right to decide how much authority these local governing authorities will have. They have them by virtue of this constitution. They can do all these enumerated things by virtue of this constitution even without a vote of the people. Now, what you are going to see if we adopt Section 9 as it is, you won't have anymore home rule charters being passed under Section 8. There won't need to be. Why would anyone want to have a home rule charter? The governing authorities will already have all the power that they would have under a home rule charter by virtue of Section 9. Now, if we are going to have a distinction between home rule parishes and those that don't have home rule, then we've got to adopt Mr. Conroy's amendment. Otherwise, there will be no distinction between the two. Now, you compare, say, East Baton Rouge Parish to Livingston: East Baton Rouge with a home rule charter, Livingston without. East Baton Rouge has a great deal of authority in its governing authority that the Livingston Parish police jury doesn't. But, we have it here by virtue of a vote of the people. Now, under Section 9 as written by the committee, the people in Livingston parish are going to have their governing authority with all sorts of authority even though they have never voted to have it. Now, that's the distinction here--it's a different question entirely. We're not debating the same thing over and over again. We're debating now, whether or not people are going to have a right to vote to have a home rule charter, or whether we're going to impose virtually a home rule charter on them by virtue of this constitution. So, let's adopt Mr. Conroy's amendment and give areas without home rule authority whatever authority may be granted to them by the legislature and this constitution, but not more extensive authority that they would have under a home rule charter.

Questions

Mr. Willis Mr. Jenkins, pray tell me how you are going to have home rule that the rules are not made at home?

Mr. Jenkins Well, the only way you're going to have home rule is if you adopt a home rule charter, Mr. Willis. Now,...

Mr. Willis We're talking about Section 9, not Section 8.

Mr. Jenkins Well, you don't have home rule under Section 9. The theory of home rule is that you have home rule in an area if the people vote to have it. That's the theory of home rule.

Mr. Willis Well, now do the people have to vote for the legislature to legislate? Does the legislature go ask for a vote of the people to legislate?

Mr. Jenkins No, but if the...

Mr. Willis Why do you require police jurors to do that?

Mr. Jenkins If the people of Livingston Parish, for example, want to have a home rule charter, which they don't have now, giving them all this wonderful authority, then right now under Section 8, they come along with fifteen percent petition for a commission to be elected; a commission will be elected and come up with a charter, and then the people will

vote on it one way or the other. Now, that's if they want home rule. You know, it could...has it occurred to you maybe the people in some parishes don't want home rule. They could have had it in most parishes now, but they didn't want it. But, by Section 9, we're going to impose it on them whether they want it or not.

Mr. Willis Hasn't it occurred to you the reverse: that the people don't have it because they can't get it; they've got to go genuflect to the legislature for it?

Mr. Jenkins Really, frankly, I don't know of any parish that ever has wanted home rule that hasn't gotten it. But, certainly under Section 8, all they have to do is petition and they vote on it and they can have home rule.

Mr. Willis You are telling me that the probable is improbable. Now,...

[Quorum Call: 92 delegates present and a quorum.]

Further Discussion

Mr. Burson Mr. Vice Chairman, ladies and gentlemen of the convention, my voice is not as loud as usual today, but I have not spoken on any topic in this convention about which I feel more deeply than this section. I speak against the amendment because to eliminate Section 9 would eliminate the heart of the Local Government Article. Do not make a mistake. The effect of Section 9 is not to bestow upon non-home rule charter areas the same power as Section 8. If you will look carefully at Section 8 (E), you will see there a specific prohibition that "the legislature shall not pass any law, the effect of which changes, modifies or affects the structure and organization and/or the particular distribution and redistribution of the powers and functions of any local governmental subdivision which operates under a home rule charter." Now, if you will look at Section 9, you will see, in that case, that there is no such prohibition and that I have said there specifically that the non-home rule charter local governments are subject to the general law of the state in that area. Of course, all local governmental units are subject to the general law of the state in its effect as general law. What we mean with Section 9 is quite clearly this: that the residuum of governmental power has to rest somewhere. Somewhere there has to rest the power to do the things that need to be done. What we are saying here is that insofar as it affects the administration and conduct of local governmental affairs, that that residuum of power shall be with the local governmental unit and not with the state legislature. The practical effect of this, as has been enumerated by many other speakers to this podium, is that when a police jury in the parishes of St. Landry, Arcadia, which I represent in part here, want to establish a garbage dump or to ban the shooting of B B guns in their jurisdiction, that they will not have to come to Baton Rouge to get a special section of Louisiana Revised Statutes, 33:1236, which I have here in my hand, which they have had to do in the past. Now, the objection has been raised: well, you are going to have different laws applying in different places. Let me point out to you that Section 1236 of the Revised Statutes, Title 33 is replete with exceptions to each state, excepting ten, fifteen, twenty parishes from a particular section. This is a spurious argument for the reason that what is complained of is what exists at the present time. I submit to you that it is far more likely that you will have uniformity under the scheme that we propose in Section 9 because it is much easier and simpler for the legislature to prohibit things than it is for them to permit every little thing that a local governmental unit has to do. It would be quite easy, for instance, after the passage of Section 9 of this article, for the legislature to go into session and, at its very next session, set out in detail in one simple comprehensive statute those things which a police jury

and/or a municipality could or could not do.

Mr. Tapper: Mr. Chairman and fellow delegates, I rise in support of the Conroy amendment mainly because well...of course, a lot of the objections have already been stated here. But, my main objection is to the [Conroy amendment] which deals with taxation says the "tax under limitations." Limitations provided in this constitution are by general law and not by special law. I think that the power of taxation is given to the general government, not to the local government to tax the people. I think it is a local government to tax the people, unless it's specifically prohibited by this constitution or by the general law of the state. I think that's the main objection to the amendment.

proposal, that would allow local governments to assess income taxes, would it not?

Q. Now, could you answer that question? Did you say you would not be surprised if it would prove that it would.

Mr. Perez: Mr. Tapper, are you familiar with the fact that in the revenue section of the Local Government Article there is a specific requirement for every type of tax that there be a vote of the people, so that this provision to tax has to be read in light of the other provisions and the revenue sections, which require that there be a vote of the people in every case?

Mr. Upper What section are you referring to;
what's the number of the section?

Mr. Perez. The sections--and I'll have to look for them as we go along if you want me to answer four question--but the sections have to do with sales tax, with ad valorem taxes; they are found in Part II under finance. For instance, if you will look in Section 31 "millage rates may be increased in any parish when approved by a majority of the voters who in any election held for that purpose and that same provision is repeated, you realize, is contained in every other section which provides for taxation under the finance section?

Mr. Tapper Yes, I understand your reasoning there, Mr. Perez, but I haven't gotten to that yet. I don't know whether this question is being asked, will adopt this particular section on page 15. But, we are discussing Section 9 now, and I think that maybe it should be provided here that--and I may not have any objections to it if we provide in this particular section, which is a general section--that in order for any governing body to levy a tax, they would have to have a vote of the people.

Mr. Perez: Wouldn't you realize it's the local government's intention...the Local Government Committee's intention to require a vote of the people in every case, because you do find these provisions under the finance section?

Mr. Lapper: There is a difference between the two sections. But again, we are dealing with this particular section, and I think maybe we should put it here.

Mr. Jenkins Mr. Tapper, have you seen anything in this article or the Revenue and Taxation Article that would prohibit a local governing authority from creating a new tax, a different type of tax, say a value added tax, for example, and imposing that tax or raising that tax? Are you aware of any vote of the people required for something like that?

Mr. Tapper No, I'm not aware of it, Mr. Jenkins, unless someone could point it out to me. I haven't noticed it in this article at all.

Mr. Burson Mr. Tapper, does the legislature have to get a vote of the people before it taxes the people of the State of Louisiana?

Mr. Tapper: Not in all areas, Mr. Burson, but it certainly...it has the authority to levy sales tax.

Mr. Burson: Well, do you know that I would not rather have people imposing taxes on me that I can go down to the meeting and discuss those taxes with them, you know, than to have them imposed on people here in Baton Rouge?

two wrongs don't make a right.

of a city dependent upon a state legislature? In other words, budgetary limitations and the ability

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to incur debts are reviewed by the state legislature and approved or otherwise rejected by the state legislature?

Mr. Tapper No, sir, Doctor, that's not correct.

Mr. Weiss I think that's true and...

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, it seems to me that we need to make a basic decision here, a decision as to whether or not we want to be a state, for it seems to me that the basic issue in this article and in this particular section is really not a question of home rule; it is a question of secession. I submit to you that I love this state that we are representing here and of which we are a part. I do not want to see different parishes and municipalities to secede from the state, but rather I want us to have some corporate-nisms. I want us to stand and work together as a total state. It seems to me that we need to make this basic decision and once we make it, we will know how to respond, not merely to this section and to this amendment, but to the succeeding sections and amendments that will follow. The other thing I want to say is that Mr. C. J. Egan, who is President of Jefferson Parish, and Mr. Tom Donelon advise me that they had been to a number of parishes throughout the state to explain the home rule charter and that many of these parishes and police juries have not followed through with the kind of home rule charter which Jefferson Parish has because they did not desire this kind of provision. The Conroy amendment places the authority with the people and this is where it should be and therefore I urge your support and your vote for the Conroy amendment. Thank you.

Chairman Henry in the Chair

Questions

Mr. Lanier Reverend, is it not true that under Section 11 that local governments have no power whatsoever to enact private or civil ordinances governing civil relationships?

Mr. Stovall That's a part of the problem, I think, Mr. Lanier, to this article. It seems to give powers in one section and it takes them away in another. I think that this is the problem, that rather than having a simple straightforward document that we can deal with in a realistic way, it is self-contradictory and says different things in different sections.

Mr. Lanier Let me ask you this, Reverend. Isn't it true that in Section 9, that it says that "The legislature by general law may confer any of these powers and functions to local units of government"?

Mr. Stovall Mr. Lanier, if we are going to provide for the legislature to do certain things in these sections, it seems to me that we should trust the legislature to have an objective, comprehensive, rather than a fractured, approach to the different matters relating to home rule and the powers of municipalities and parochial governments.

Mr. Lanier With reference to this fracturing, if we had a specific designation of powers today, how do we know twenty-five years from now if those powers would be the ones that would be the necessary tools to solve our local problems?

Mr. Stovall The basic question is whether or not we are going to operate on the basis of fear and, therefore...or the basis of trust. I submit to you that this document was conceived in fear and nurtured in suspicion, and this is the reason that it has so many objectionable sections and features. It seems to me that we have got to come to an atmosphere of trust, and I believe that we do have a new atmosphere in Louisiana. I think we are developing a legislature that is worthy of our trust and our commitment.

Mr. Arnette Reverend Stovall, just a quick question. You said this was a basis of trust and fear. Don't you think that the reason you are supporting this particular amendment is your fear of local government and not trusting local government?

Mr. Stovall Mr. Arnette, I've tried to make a point several times that our whole system of government is based on a system of checks and balances. I think we need to consider state's rights, as well as home rule. I think that the state has certain rights, not merely coming from the federal government, but also in terms of what goes on in the state.

Mr. Arnette Well, under the committee proposal, can't the legislature prevent the local government from passing any law? Doesn't it say that anything prohibited by the legislature, the local government can't do? Isn't that enough of a check?

Mr. Stovall This section does more than...it gives the residual power, which I think is the real point at issue, Mr. Arnette.

Further Discussion

Mr. Anzalone Mr. Chairman and ladies and gentlemen of the convention, you've heard a great deal of talk about government originating with the people. I would remind you that people are at home. So far, government has removed itself from the people to the extent that your local people don't actually know what's going on in government. One thing that we do know about government is that it's costing more and more and more, and I dare say one of the reasons that it's costing more is because we are spending more of it on different things that probably we should not be spending it on. Just to cite you one particular example, coming over to Baton Rouge I hear on the radio where the federal government has appropriated in excess of fifty-five thousand dollars to study the psychological effect of the newly created farm to market roads in Venezuela. Well, that might be nice, but I would say one thing, that if the Tangipahoa Parish police jury had hold of that fifty-five thousand dollars, that we would do something with it besides study some roads in Venezuela. We've heard that we are going to have so many more taxes if you return government to the people. I dare say more taxes are passed on the people of this state by legislators who come to Baton Rouge and fail to look over their shoulders to see what the people back home would like for them to do, rather than taking a good strong look at what is actually needed. People have said that in this particular article you have no regulation. I wish to call your attention that the taxing authority is not only limited to the constitution but is also limited by general law; the incurrence of debt is limited by the constitution. This home rule provision in this particular article is going to give to the local governments not the authority to tax, the authority to tax is out of the picture, not the authority to tax their people out of existence, but merely the authority to run local government as they see fit, which is as they should have in the first place. We have heard that they are never denied when they come to Baton Rouge. I submit to you that they need not come to Baton Rouge at all. We have heard of this unbridled power. Well, we had a good example of our unbridled power in my local village town meeting of two weeks ago, when we spent an hour and a half arguing whether we were going to buy a new battery for the police car. This is the unbridled power that they are talking about? I dare say that nothing could be further from the truth. Ladies and gentlemen, this is a constitution for the people; this is government for the people. Give it to them; it belongs to them.

Questions

Mr. Newton Mr. Anzalone, this government...that's closest to the people is closest to there anywhere in this Committee Proposal 17 that provides for election of police jurors and school board members from

Mr. Scarlone Now, in this particular article, no.

Mr. Newton In Committee Proposal 17, there is no provision for that, is there? Are there any wards in Tangipahoa Parish that don't have a police jury or school board member?

Mr. Anzalone Are there any wards...

Mr. Newton Did you know that Ward 8 does not have either a police jury or a school board member, no representation whatsoever?

Mr. Anzalone Mr. Newton, if you will recall, Ward 8 is represented on the policy jury, most certainly is. It's not our fault, because that's some of that one man one vote rule that came up.

Mr. Weiss Delegate Anzalone, isn't it true that the unbridled power that is being referred to could be bridled and limited by the state legislature restricting and limiting the taxing power of the cities and of the municipalities?

Mr. Anzalone Dr. Weiss, it so specifically states exactly what you are asking.

Mr. Weiss Therefore, some of the worries that have been expressed by the people at the podium is really uncalled for, don't you think?

Mr. Anzalone I most certainly do.

Further Discussion

Mr. Nunez Mr. Chairman and ladies and gentlemen of the convention, in the Committee Proposal 17, in Section 1 through 6, let's see what we have done for home rule because we've had a lot of discussion about home rule. In Section 7, we ratified the existing home rule charters; that's the parishes and the municipalities that are now operating under home rule charter; that's Orleans, East Jefferson, Caddo, Baton Rouge and Plaquemines Parish. Then you ratified these various municipalities that have home rule charters. In Section 8, which we spent three days on, all we did in Section 8 was to give to those governing authorities—mainly parishes and municipalities that do not have a home rule charter—we gave them a vehicle to do so within the constitution, rightfully so; I thought it was a good amendment. Now, what are we doing in Section 9? What we dealt with in those two articles were five parishes; the other fifty-nine are not dealt with, in so many municipalities. So, if we do not adopt this section—or defer the Conroy amendment—is a better way of putting it—if we do not adopt this section, we are giving home rule to five parishes and the various municipalities in this state. I want you...you people who represent parishes, in particular, that have police jury systems and let's see what this does to your police jury system. It doesn't give them a vehicle, they are going to have to apply for that and submit it to the people. It simply does this, and follow with me and bear with me for one minute, because I think this is a very, very important section for people who do not have charters and are not municipalities. If you want to treat them all equally, you'll adopt this article. This section—it allows them to deny them this right, by general law," which means the legislature by general law can deny them the right to manage their own affairs. It allows them to govern their own government and their own administration, which means if the legislature by general law were to deny them this right, the legislature can deny them this right. It allows them to define the powers, duties and qualifications of their parochial and municipal employees. Let me tell you in the last session of the legislature through the Local and Municipal Committee, which I am chairman of, we spent two days...for St. Mary or New Iberia Parish, determining what

what we should consider in this article. In No. 5, it allows them to tax "that not denied by the constitution or general law." Now, I ask you, what is so strong about this particular section? If we do not adopt it, remember, we allow those fifty-nine parishes that don't have a home rule charter...rule charter, we put them under "business as usual," that is, permissive type of government, permissive type of government: coming to the legislature to get authority to cut grass, coming to the legislature to get authority to govern their employees, coming to the legislature to allow ambulance services coming to the legislature for any little thing they want to do. And let me remind you of this: the legislature can deal with this problem in the present constitution once every two years; every even year we can deal with nonfiscal matters. The police jury has to deal with them on a daily basis, on a daily basis. If you go to your police jury meetings, and I go to all of mine that I can make, and you see the resolutions and the ordinances that they passed and the people there with the little bitty things that they are griping about all of the time. Well, for two years I put off my jury...an ordinance allowing them to fill a drainage ditch, in simply because they needed a legislative act. Well, I finally passed one this time. In the meantime, and I don't want to go into the gory details, but there were a number of accidents, a number of drownings, a number of other things that were unnecessary. So, we got the authority and now they are going to do it. Why should they have to come to me, the legislature, to get authority to go back to those people so they can tax themselves to fill a drainage ditch? Is that what you want? I don't believe it is.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in support of the...and at the outset let me straighten out Senator Nunez's comments that I think were...article, you know there's a definition section. If you look at Section 8, contrary to what Mr. Nunez implied, that no parish in the future would be able to create a home rule charter, that's absolutely incorrect. Section 8, the beginning of it, which we adopted said "any local governmental subdivision may adopt, amend and all of this, which is the home rule charter. Now, go look at your definitions of what local governmental subdivision means; it means any parish or municipality. So when Senator Nunez says that there are only five present parishes and any number of cities who may adopt a home rule charter in the future, that is absolutely incorrect. There is no prohibition to any parish or municipality adopting a home rule charter type of government with respect to the way it wants to operate. David...that "There is no reason for us by this Section 9...lute home rule charter provisions." There...There is no problem about parishes adopting this rule charters. The city of Alexandria is having is...mission; they had no trouble...Alexandria wouldn't have wanted...national mandate impose upon...for St. Mary or New Iberia Parish, determining what

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in a certain area. Well, in that particular statement, there is a self-imposed contradiction. You can't have a general law passed if you are going to have to deal with something that Avoyelles Parish will do in the future that involves just Avoyelles Parish. So, you've got a problem there. But the biggest problem is that what's going to happen if, for instance, Alexandria adopts a home rule charter and specifically vests in the city of Alexandria certain power, the right and the power to do such and such? Then after the adoption of this constitution the parish of Rapides, pursuant to Section 9, passes an ordinance diametrically opposed to what the city of Alexandria granted unto itself in its home rule charter; that's the big problem. What's going to happen in the future with respect to that? Now, my answer to that is very simple. If we leave this matter, as it should be, to the wisdom of the legislature, which does not connote no home rule and does not... is not the opposite of people governing their own affairs, then the legislature when the Rapides Parish police just wanted to do something contradictory to the home rule charter of the city of Alexandria—assuming it's passed and adopted—would be able to say that we can't do that number one, and if we do it, if we grant it to the parish of Rapides, it will be invalid and illegal because the home rule charter of the city of Alexandria will prevail. You've got an inbuilt conflict between two local governmental subdivisions, which we have identified in the definitions as either municipal or parish. I'm telling you, you're going to be in some trouble in the future with respect to litigation.

Questions

Mr. Lanier Mr. Roy, is it not true that Section 9 does not make every parish a home rule parish?

Mr. Roy I think it does.

Mr. Lanier Have you read Section 8, Mr. Roy?

Mr. Roy Yes, and that deals with cities and parishes, under your local governmental definition.

Mr. Avant Mr. Roy, you drive from Baton Rouge to Alexandria, you go through at least six incorporated municipalities: Port Allen, Erwinville, Livonia, Krotz Springs, Bunkie and Lecompette.

Mr. Roy Yes, sir, and Cheneyville.

Mr. Avant All right, that's seven. Under this committee proposal as it's drawn, and Title 33 of the revised statutes, the state has fixed speed limits on certain state highways and says specifically that the municipalities may increase but may not decrease those speed limits. Are you familiar with that?

Mr. Roy Yes, sir.

Mr. Avant The state has also regulated the type of equipment that you have to have on an automobile, but they do not have any such savings clause or restriction on municipalities. Isn't it a fact that under this committee proposal, as it's drawn, that if you drove from here to Alexandria, you could have seven different types of regulations as to what you had to have on your automobile, and it would be the law, and you would have to comply with every one of them until the legislature came back and affirmatively passed another statute saying, "Municipalities, you can't do that?"

Mr. Roy Just one thing to that, Jack, not just a general law saying "Municipalities, you may not do that," but under Section 9 (B) they would have to pass a general law specifically dealing with each municipal ordinance or parish ordinance; it makes it work...

Mr. Avant Isn't it also a fact, Mr. Roy, that...

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I rise in strong opposition to the Conroy amendment. We are here to write a 1973 Constitution to take care of the needs of the problems of the day and the needs of the years to come. At the call of this Constitutional Convention when Act 2 was called, at that time in history in this state, the present constitution was amended five hundred and thirty-two times. Of those five hundred and thirty-two times, eighty percent of the amendments had to do with the problems of local government. You know this as well as I know this. So, if we are here to write a new constitution, let's write a true new constitution, a constitution for the needs of the day, yes, and the needs for the future. You've heard from this podium delegates get up here and advance all kinds of scare tactics, telling you that they are going to control the employees of the cities; they are going to control the businesses of the cities: such as permits, etc., etc.; they are going to have control of the safety and welfare of those various political subdivisions—namely, parishes and municipalities throughout this state. They advanced this as thought; of speed; traffic controls—when you go through one city to another city, you would have these heinous problems that we speak about. You, in fact, have these problems today in a very few isolated sections of the state. That is the law today and we certainly live with those laws. They won't be worse; they will be better than what they are today. Let me ask you a simple question, as one delegate to another, "Who are these people who live in these political subdivisions? Who are all of these people who live in these sixty-four parishes of Louisiana? Who are the people who live in the cities and all of the political subdivisions?" They are you and I and the other 3.6 million people in this state, and they certainly have rights. They don't need to go to the legislature every time there is a little problem or local problem that arises. Let me tell you the truth of this whole question in debate today. The truth of the matter is that the political pressure groups and the other groups—and you know quite well the groups I speak of, the pressure groups—instead of going to a hundred different cities and municipalities and political subdivisions throughout the sixty-four parishes of Louisiana, they don't want to go to a hundred of them. Instead of going to a hundred or so individual sections of this political subdivision, they want to come to Baton Rouge to the legislature and lobby them, because there seems to be a way it's easier done here in Baton Rouge under the influence of a legislature in session. I don't know how the tricks are done. I don't know, but that's the whole question today in Section 9... Fellow delegates, I would ask you to please pause a moment and think the seriousness of this. Do we want to give back... give to the people of the State of Louisiana their rightful government, or do we want to continue the 1921 Constitution that has many problems in the area of local government? I ask you to vote down the Conroy amendment. Thank you.

Questions

Mr. Mire Mr. Chatelain, have you ever known of any good, solid request from local government to the legislature—anything right and reasonable—to have been turned down?

Mr. Chatelain I'm not qualified to answer that. I don't know too many cases of... either way.

Mr. Mire Well, you were making some allusions about the legislature, I thought you knew what they had been doing.

Mr. Chatelain I don't follow you. I don't understand your question, sir.

(Motion for the adjournment of the session rejected: 10-81.)

Further Discussion

ments here. I was sitting down there and I heard some of the remarks made about the legislature and I'm going to attempt in my own way to try to clear the air concerning Section 9. I agree with Mr. Jenkins, when you say that when we give all powers to all local governments those that are not denied or prohibited by their charter, constitution, the general law, then you're really in fact taking away the vote of the people to decide whether they want a home rule charter or not. Secondly, and I want to try to bring this point home clearer to you. The only reason why a majority of the local parish or municipal governing authorities have come to the legislature in the past is because they did not operate under a home rule charter. There was no other place for them to go. Prior to this conference, there was no other place for them to go. There exists a constitutional provision under which Thibodaux has presently applied for a home rule charter. If most of the municipalities had problems

versus back in Section 8, but it looks like some of the people at this convention thinks like--feel like we haven't. I thought we decided in Section 8 that we ~~are~~ ^{are} ~~are~~ ^{are} the legislature when they wanted a law passed. I thought that was a vote of this convention. Why would the local governmental subdivisions be treated differently from others? I think it ought to be all the same and that was my particular point in getting up here to talk. We've already decided that, we've already decided we want local governments to run their local business without having to go to the legislature. Now, there are safeguards in this that would prevent anybody from doing anything to go into them, but the legislature can prevent a local governmental subdivision from doing anything it thinks that the governmental subdivision should not do. Mr. Avant brought up a...point when he said, "Do you realize there's a state law saying that... in these little towns the legislature said that these towns may increase the speed limit, but not decrease it." Well, that's a perfect example of this limitation that we put in Section 9, it's a specific denial of the local governmental subdivision to do something; for it, to be exact, to decrease the speed limit in those towns. We had a very valid point for the limitations already in Section 9. I think it's very obvious that we just don't want to do that and we don't want to treat all municipalities and all localities equally. Let's not make everyone go to the legislature any time they want to pass a local law. Thank you very

Mr. De Blieux Mr. Arnette, under the provisions as written here, would any parish or municipality not having a home rule charter have to come to the legislature to get authority to enact any kind of an ordinance as they see fit?

Mr. Arnette I really don't know about any ordinance. I really don't know, Mr. De Blieux.

prohibited in the constitution or by statute that's already enacted.

Mr. Arnette That's already enacted?

Mr. Arnette: I really don't know Mr. De Blieux.

Mr. De Blieux Well, that's the way I read it. If you understand the provision, they will have complete authority. Now, this is not by vote of the people of the municipality or the school board, but by grant of law in this constitution. They will have the right to go ahead and act without consulting the legislature and then getting authority to

Mr. De Bliieux. Yes.

Mr. Arnette Under Secretary

The divisions can set their orders.

are not in conflict with the general laws of this state.

to be

Q. I don't think it's very great. (C)

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they are going to have in their local ordinances or what restrictions they have...

Mr. Arnette Senator De Blieux, under home rule charters or under a police jury or under whatever form of government you have, you have representatives that vote on those laws.

Mr. De Blieux But here...at least the people on the home rule charter basis have some...

Mr. Arnette They adopted the charter. Yes, Senator, that's true, but they did not adopt every law passed by their governing body.

Mr. De Blieux But, they don't have any choice of restrictions of what they wanted to limit their local governing body either; that's the difference in a home rule charter, isn't it?

Mr. Arnette Well, there is one difference, yes.

Mr. De Blieux Yes. And that's a big difference that's what this whole fight is about.

Mr. Arnette If they wish to be under a home rule charter, they may.

Mr. De Blieux Yes. Well, now that's the big difference...

Mr. Arnette If they want to have a home rule charter that limits certain things, they may do so.

Mr. De Blieux Now, isn't that the big difference between 8 and 9? In 9...in 8, the people have a chance to pass on it and 9 they don't?

Mr. Arnette They pass on...their representatives every time they come up for election. They pass on their...

Mr. De Blieux But not the limitations that they want to place on the representatives, isn't that correct?

Mr. Arnette That is correct, in a way, yes.

Mr. Jenkins Greg, you know, not long ago I believe, it was...I believe it was St. Bernard Parish voted on whether or not to adopt a home rule charter, whether or not to have home rule, and the people there voted it down. They didn't want home rule, but really under Section 9--

Mr. Arnette They did not want that particular home rule charter.

Mr. Jenkins Well, that is not saying...We know they didn't want that home rule charter. It could have been--they just didn't want home rule per se, giving the governing authority that much power in that parish, but in Section 9 aren't you going to give them that power whether the people of that area want it or not?

Mr. Arnette I'm giving the power to any local municipality of parish or any local governmental subdivision that wants to pass a law and not have to go to the legislature to get permission to pass laws.

Mr. Jenkins But, isn't it...

Mr. Arnette That's the whole point of why I would like to see the committee proposal adopted...

Mr. Jenkins Well, naturally if the people elect an executive body, giving authority to that body, and then they can...adopt a home rule charter under Section 8, but why do you want to give that to them under Section 9?

Further Discussion

Mr. Willis Mr. Chairman, and fellow delegates, I just want to express my hope that each of

us will doubt a little of our own infallibility. We must not, when a passage is easy to understand, continually try to misunderstand. This passage of Section 9 made me fastidious precision that even a person reading it in bad faith cannot misunderstand it. All one may do is pretend to misunderstand...misunderstand it, a pretense which is greatly to be regretted. Always taught and always thought that government of the people, for the people and by the people, all the people, was part of the definition of our form of government and not of a monarchy. The items of Section 9 are so classified and correlated and combined that to sever them is to mutilate the proposal and emasculate local government. If we want home rule we must allow the rules to be made at home and under this Section 9 if the local rules are obnoxious to, the people of the home rule area, have two glorious remedies, the courts and the legislature under Section 9 (8), which will meet every year. I have much less fear of a responsibility by local government than I have that the legislature would not remedy the irresponsibility for which and if the legislature has fear of a responsibility it may allay its fear by preempting the field with general law. Who is here to say that the legislature does not have vigilance and foresight? Where is this attribute of trust we heretofore gave to the legislature? Should we give local government duties and no powers, but the poor privilege of begging the legislature for it? During the argument on the Legislative Article, we were...we were pleaded with, to untie its hands. This Section 9 unravels a big knot tying the hands of the legislature. This amendment prepares another altar in our legislative halls for police jurors to genuflect and pray for the very meager power to change their duties. Statistics may estimate the education of poor people, but it may never estimate their intelligence. This amendment reverses uniformity for preferences and I oppose it as destruction under the guise of construction. It abandons unused powers referred to by Ms. Zervigon. It does not abandon common sense and good judgment. For that reason, I oppose the amendment.

Questions

Mrs. Warren Mr. Willis, I hope you won't quote Shakespeare 'cause I want to understand your answer.

Mr. Willis I promise you, madam.

Mrs. Warren This was a question that I wanted to ask Mr. Arnette, so now I'm going to have to ask you. Mr. Arnette said that...oh. Senator De Blieux made the remark that the difference in the Conroy proposal or amendment and the Seventeen proposal was that the people had a chance under the Conroy amendment where they didn't have it in the committee proposal. Mr. Arnette answered that their elected representatives come before them every four years and they can...in other words they can get them out of office if they don't like it. Now, my question is this, the laws that the city council or police juries enforce, if they are put out of...defeated at the polls, what happens to this law just by them being defeated at the polls, does it change the law?

Mr. Willis My dear lady, if a law...if you had listened to me attentively I said, that if a law, a home rule law, is obnoxious to a very vigilant legislature can have it about, that at the next session.

Mrs. Warren I wish you could define that for me, but it might take a little bit too long. Thank you.

Mr. Willis I should be happy to consult with you at your desk.

Mr. Flory Mr. Willis, in helping me to understand Section 9, could you perhaps tell me what it means or what it means when it says "to create special districts" and then over in Section--one of the other sections where it allows them to create historical preservation districts for economic reasons or architectural reasons and then in a further section it grants them authority to acquire this property

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pect to Section 9.

Questions

Mr. Lanier Mr. Gravel...I voted for your amendments like this and the other ones, but I don't see the necessity for it here since we do have a provision that if it is denied by the constitution that the local government would not have that power. Why do we need to rephrase that?

Mr. Gravel Well, I think I've stated that previously, Mr. Lanier, this way. This language would suggest that there would have to be an affirmative specific denial in this constitution. The language that we've adopted previously in similar situations where similar language was used has been to make it clear that we're talking about any provision that's not consistent with this constitution. Now, I think there is a difference between the two.

Mr. Lanier Well, let me ask you this. It is not your intention am I correct, to do anything that would prohibit the concurrent exercise of powers and functions relative to the management of local governmental units between the units themselves and the state legislature as provided for in Section (B) of Section 9?

Mr. Gravel It is not...it is not and it would not unless there is some other specific provision that would be inconsistent with Section (B) and I don't know of any.

Mr. Lanier Do you know of any provision in the Legislative Article which would be inconsistent with this?

Mr. Gravel You mean in the general law?

Mr. Lanier In the Legislative Article that we have adopted.

Mr. Gravel No, sir. I do not. And it's not my intention, really, I think this fits with this section without any difficulty and I don't know of any provisions that are inconsistent with Section 9, Par...Subparagraph or Paragraph (B) at this point and I don't think...you know that there will be any that I know of, but I think to make it clear that we're talking about two different concepts and one is: a concept of whether or not there is a denial, specifically and affirmatively, in the constitution or whether there is an inconsistent...

Mr. Kean I'm afraid this is...this may be a friendly question and it kind of bothers me...to be asking one of Mr. Gravel, but do I understand the point you make, Mr. Gravel, that if we say "not denied by this constitution" there has to be some affirmative denial. Whereas, if you take that out and...and use the words "subject to and not inconsistent" it then becomes the question of interpretation between the powers as...and what's in the constitution?

Mr. Gravel That's right. That's correct, Mr. Kean, and as a matter of fact, this same language I'm...almost certain is the language that is used in the Baton Rouge charter. That's consistent I think with the thought.

Mr. Lowe Wouldn't you agree, Mr. Gravel, since you got such a friendly question from Mr. Kean, that we could almost vote on this amendment, right now?

Mr. Gravel Well, I would. I think so. I move the previous question if there are no other questions or amendments.

[The point of order was sustained.]

Amendment

Mr. Poynter Amendment No. 1. Bollinger. Amendment No. 1. On page 5, line 20, after the word "law" change the comma "," to a period "." and

delete the remainder of the line and delete lines 21 through 23, both inclusive in their entirety.

Explanation

Mr. Bollinger Mr. Chairman and fellow delegates, this is in the nature of a technical amendment I guess you could say because when you read this section Paragraph (A) the words deleted by the amendment do not change the effect whatsoever of the section. The section would read: "Section 9. (A) Any other local governmental subdivision may exercise any power and perform any function necessary, requisite or proper for the management of its affairs not denied to it by its charter, by this constitution or by general law." The enumeration of these specifics could still be denied local government by general law by this constitution or by its charter so there really is no reason to enumerate. I move the adoption of the amendment.

Question

Mr. Duval Mr. Bollinger, wouldn't you say that the language you're deleting is completely superfluous and not necessary?

Mr. Bollinger Yes, sir.

[Amendment adopted without discussion.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Arnette]. Page 5, line 19, immediately after the words "to it" and before the words "by this" delete the word, and punctuation "by its charter."

Explanation

Mr. Arnette I think this is...a technical amendment of sorts. When we decided in Section 7 that Section 7 would apply to both legislative and constitutional home rule charters, that Section 9 will apply to everyone that does not have a charter and I think taking out this language will do that. I think it's in the nature of a technical change, but it just makes it abundantly clear that Section 9 applies to municipalities and parishes without home rule charters. I urge the adoption of it.

Question

Mr. Lanier Mr. Arnette, I agree with your statement that the legislative charters would presently be covered under Section 7 as we have adopted it, but I am wondering if that was really our intention at the time that we adopted it, to cover legislative charters?

Mr. Arnette I assume that's why we voted the way we did.

Mr. Lanier Perhaps we could get a question by a way of point of clarification from Mr. Conroy on that, if that was his intention. I'm not sure on that point and I'd like to know.

Further Discussion

Mr. Perez I want to speak only to this point, that the reason that these words "by its charter" were originally put in this article was because of the fact that it was intended that this particular article, Section 9, would cover legislative charters. Since the...we have amended Section 7 to include all charters including legislative charters the deletion of these words "by its charter" in this particular section would be appropriate; therefore, no objections.

Question

Mr. Tapper Mr. Perez, you say we...amended Section 7. I notice that it refers to existing home rule charters, did we take that out of Section 7?

but the amendment as I appreciate it includes existing charters.

Mr. Tapper Did you know my concern...if it did that, that's fine, but my concern is if a parish that does not have a charter would adopt one...I want to make sure that it would come under section

Mr. Perez Section 8 then takes care of that.

Mr. Roy Mr. Perez, would...this though then negate Mr. Gravel's amendment because it seems to me it goes right back and it says "not denied by this constitution," which would mean that we would have to have an affirmative denial rather than "not inconsistent with any provisions." You understand...he's putting right back in what we just took out by Mr. Gravel's amendment, isn't he?

Mr. Perez Not that I can understand it. What it it would read now, "not denied to it by this const..." well, we have left out "by this constitution." It would now read, "not denied to it by general

Chairman and ladies and gentlemen...I'm going to withdraw this amendment because it has been pointed out to me that leaving it in here doesn't cause any problems, and taking that particular the words out might. Therefore, I withdraw it to save a lot of discussion

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Jenkins], on page 5, line 20, after the words "general law" delete the period "... inserted by Floor Amendment No. 1, proposed by Delegate Bollinger and just adopted, and add the following: "or preempted by general law."

Amendment No. 2, on page 5, delete lines 29 through 32, both inclusive, in their entirety, and on page 6, delete lines 1 through 4, both inclusive in their entirety.

Explanation

Mr. Jenkins Mr. Chairman, delegates, states the State of Louisiana goes into a certain area of the law, or an area of endeavor, and passes a number of regulations, controls, or what have you. For example, the much rehearsed case of milk price fixing, setting of standards of milk, or minimum wage laws would be another example or possibility. The list goes on and on, but in such cases it certainly would be reasonable for local governments to be duplicating or increasing upon these same regulations and rules. It should not be necessary in such cases, when the legislature, for example, passes a licensure law for physicians, to say that such a law would preclude local governments from passing a similar law. In such instances it should be clear that the legislature has in effect preempted the field, that the legislature's rules and regulations in that area take up all the room necessary. It's not subject to being regulated by local government. It's not enough simply to say that local governments can do whatever is not denied them by the constitution or the statutes. They also should be allowed to legislate in areas which have been preempted by statutes. That's what the first amendment does. It simply says that when a certain piece of legislation has in effect preempted local ordinances or restrictions, then that should be sufficient, and local governments should not legislate in those areas. The second amendment should delete Section (B) at the bottom of page 5. This section creates a multitude of problems. It

in the case of milk price fixing, what that means is that the local governments can regulate milk, or regulate physicians, or any number of the other things that are regulated by the state. So, I urge the adoption of this second amendment to eliminate that Section (B). It really has no place in this provision. If the legislature's regulating a certain field, and has in effect preempted it, or if it has denied to local governments certain authority, then the local governmental subdivision should not intrude into those areas. So, I urge the adoption of these two amendments.

Questions

Mr. Duval Delegate Jenkins, let me see if I understand your Amendment No. 1. Am I correct in saying, Mr. Jenkins, that if the legislature enacts any legislation at all, even though it doesn't prohibit local government or exclude local government from enacting it, that the legislature would in essence be preempting the field?

Mr. Jenkins No, I don't think that's what "preemption" means in this context; I think that it would have to be a more general or compelling type of statute in order to really preempt the field. A mere single regulation or rule on a certain area would not be sufficient.

Mr. Duval Could you tell me what a...what kind of compelling statute you're talking about? What do you mean when you say "preemption"?

Mr. Jenkins Well, what I'm talking about is just like the case of the medical licensure laws. If the state legislature passes a general law licensing physicians, sets up all sorts of regulations, sets up a board to administer this law, and so on and so on, it should not be in the purview of local governments to also license physicians simply because the licensure law did not specifically deny them that authority.

Mr. Duval Delegate Jenkins, don't you think the word "preemption" is very unclear since you are not requiring a specific exclusion. Don't you think the word "preemption" would just bring forth a plethora of lawsuits trying to determine when an area has been preempted and when it hasn't?

Mr. Jenkins No, I don't think so, any more than the language of the committee when it says that "the local government can perform any power..." or rather, "can exercise any power and perform any function necessary, requisite, or proper for the management of its affairs." I can hardly think of anything more vague than that.

Mr. Duval But, Delegate Jenkins, won't you admit that if the legislature passes a general law denying to local governments something specific, that's very clear? Wouldn't that be very clear?

Mr. Jenkins Oh, that's clear, sure, but what it it requires them to go back and for every piece of legislation in the revision to make some specific prohibition of local government regulating that area. It's so obvious in many instances that it shouldn't have to be that way. In the case of licensure of physicians

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nature of those laws, it's clear that we have preempted the field of regulation in that area.

Mr. Lanier Well, Mr. Jenkins, isn't this the exact concept that has fomented a great deal of litigation under the Federal Constitution and under the Acts of Congress as to when either Congress or the constitution are actively silent or silently silent? Are you familiar with that jurisprudence?

Mr. Jenkins Well, I am somewhat, Mr. Lanier, but you know I can hardly foresee how more litigation could be brought about than the committee proposal the way it stands now. So, I think probably this will lessen the litigation, if anything.

Mr. Lanier Were you aware of the fact that we had the question of how much litigation was caused by the language that we used, researched by the staff? Are you aware of that?

Mr. Jenkins How much did you find, Mr. Lanier?

Mr. Lanier Are you aware that we found that it did not generate litigation? In fact, there was more litigation under the specific grant than under the residual grant. Are you aware of that?

Mr. Jenkins Well, from what I hear about the State of Illinois that would not necessarily be true.

Mr. Lanier Would you like to see the cases that I have from Illinois here at the desk?

Mr. Jenkins I'd be glad to.

Mrs. Zervigon Mr. Jenkins, I'm also trying to clear up exactly what constitutes "preemption" in your amendment. Since the state regulates the speed limit on state highways, does that mean that municipalities and parishes would be out of the business of setting speed limits on streets?

Mr. Jenkins No, I don't think so. As regards to local streets, certainly not, but, as regards to state highways, it probably would.

Mrs. Zervigon Well, how are we to tell whether or not the state has preempted the field of regulating traffic speeds?

Mr. Jenkins Well, I think the same way that you'll find out what it means if you're trying to figure out what is necessary, requisite, or proper for the management of the affairs of the local government. You have to try to understand those concepts in the context in which they are written. I can't tell you a quick, ready guide; it's going to be court decision, just like under the language proposed by the committee.

Mrs. Zervigon Mr. Jenkins, are you aware that I'm asking you about the amendment that you presently have before the convention, and not one you may subsequently offer to clear the language you find confusing, and that I'm asking you to clarify your language, not our language?

Mr. Jenkins No, what I'm saying is, "I hope you won't hold my language to a higher standard than you hold your own," is all I'm asking.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, this is just a back door way of doing what the amendment which was offered, and which we argued for several hours, would have attempted to do because of the fact, if you add the words "are preempted by general law," we now have a general law which gives to police juries only certain specific, limited authority. So that the general law is already there, and if you adopt this particular amendment, you may as well delete the entire section because I say again that we do have a general law which specifically sets forth the power and authority of police juries, and, therefore,

the area has been preempted by general law. I therefore suggest to you this is a bad amendment.

Questions

Mr. Avant Mr. Perez, I'm not so much concerned about laws that may be adopted in the future. It'd be a simple matter at that time for the legislature to say, "Local government, you cannot legislate in this area." But I'm concerned about laws that have been adopted in the past. Now, we have a general state driver's license law. We have a general state motor vehicle inspection law. Now, let's just take those two laws. Is it not a fact that under this section, as it is written and proposed by the committee, that any municipality in the state could enact a driver's license law or a motor vehicle inspection law and that that would be a valid enactment unless and until the legislature came back and amended the present state law, and said, "Municipality, you can't legislate in this particular area." Isn't that a fact?

Mr. Perez No, sir, there's already a prohibitory law which prohibits local governments from issuing brake tags, licenses, and so forth. I can recall very well when that was done when we used to issue brake tags and licenses throughout the state, and the legislature passed a law which prohibited any local areas from issuing licenses or brake tags.

Mr. Avant Do you have the citation of that law?

Mr. Perez I don't, offhand, but I'd be glad to supply it to you later because I recall it very vividly.

Mr. Avant I'd sure like to see it.

[Previous Question ordered.]

Closing

Mr. Jenkins Mr. Chairman, delegates, I think this amendment will clear up many of the problems with the section and still maintain the basic intent of it. There's really no reason for local governments to start legislating in areas where there already is a multitude of legislation and control. In regard to the specific problem, the question raised with regard to highways, clearly a state highway's speed limit should be set by the state, whereas local highways and roads are going to have their speed limits set by the local governments. So, just consider the multitude of problems that will be created and brought about unless we have this limitation. Certainly these local areas should not be allowed to legislate in every area that's already controlled by the state. So, I urge the adoption of both of these amendments.

Questions

Mr. Denny Mr. Jenkins, since January 5, I don't know how many times I've driven from New Orleans to Baton Rouge. There are a lot of speed limit signs which say, "You have to slow up when you come through my city." I believe in those; I think they're sound. That's not in the state law. Your glib statement that state law only applied to highways obviously cannot be true, and I don't understand how you can make such a statement. Where are the state highways in the parish of Orleans, and in the parish of Jefferson? The state highways are controlled by municipal ordinances once you get inside of a city. So, it's clear that your preemption would ruin this, and you could go speeding through Baton Rouge, anywhere in Baton Rouge on a state highway, at sixty miles an hour. I can't conceive how you would.

Mr. Jenkins Well, Mr. Denny, the state certainly allows local governments to set speed limits according to certain limitations, and this retains that authority. If they were simply silent on the subject, certainly the state rules would apply. But, the state rules, if you have a limit of seventy miles an hour, applies only on the open road, not

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stance to improve their lot, and it is only through a meaningful form of parish government, by giving the police jury the power to deal with modern problems without having continually to come to seek legislative permission, that they will be able to meet the problems they face. I point out to you, there are whole subdivisions in my parish, both parishes that I represent, that are not in any incorporated area, nor are they likely to be because they are separated by five or six miles of open space from the nearest town. The towns in such parishes as St. Landry, for instance, are not likely to be as concerned about a home rule charter because they are satisfied with their municipal government. It provides the services they need, but it is in these large rural, unincorporated areas that the power to cope with these problems is so drastically needed, and I urge you that if you do really care about that part of America that has been called with some justification the forgotten part of America, that is, the rural areas, that you will vote for this section. I give the parish governments this power to meet the problem for this group of people that have no effective lobby to come here to Baton Rouge to lobby for their interest, that don't have the effective lobby that labor or business or the teachers or any of the other organized interest groups have to come here to Baton Rouge to make their weight felt, but they can make their weight felt effectively at the local governmental level. I ask you in their name to approve this section.

Further Discussion

Mr. Avant: Mr. Chairman, fellow delegates, I urge you to defeat this section. Now, I listened to what Mr. Burson said. Under the present law and under the present constitution, much less under the proposals that we have adopted so far, the sections that we've adopted so far, any parish or any municipality in this state can adopt a home rule charter, and if the citizens in that community or that parish wish to do so, they can. Even local governments and those areas can be given as much power as this section gives to them. But bear in mind that this section, without any approval of the people, grants to every local governmental subdivision in this state the same complete absolute power that is vested, or was vested, in the state legislature. They can do virtually anything. Now, home rule charters have been proposed in this state and have been defeated because the people in those areas did not wish to give to their local governmental officials the power that this section gives to them. I'm going to close by reminding you of just one thing, and you can multiply this a thousand fold. If you will remember when we were up here discussing the section in the Bill of Rights that had to do with the right to keep and bear arms, I pointed out to you that under the federal law, you could possess a shotgun as long as the barrel length was over twenty inches, but under state law, you could only possess a shotgun if the barrel was longer than twenty-two inches. Now, if you take this, and you can multiply this a thousand fold, not only shotguns--automobiles, boats, anything under the world that you can think of that has been the subject of governmental regulation, but I'm going to refer just to shotguns--you won't know when you go into a given area of this state whether the general state law, which says "twenty-two inches" is applicable, or whether it's "twenty-four inches" or "twenty-six inches," or what the regulations are. You won't have any way of knowing because you won't have any general state law. The point that I made with Mr. Perez--and I've got to disagree with Mr. Perez's answer to my question, and I know whereof I speak--there's nothing in this section that would prohibit any municipality in this state from enacting a driver's license law, a motor vehicle safety inspection law, or any other kind of law, unless and until the legislature comes back and specifically by another act, denies to those areas...to local government the right to legislate in those areas where the legislature has already acted. Now, I'm not concerned about things that the legislature may

do in the future because when they consider a law in the future, it'd be a simple matter to make a decision at that time whether or they want to grant or deny that particular power to local government. But what about the innumerable statutes that you already have on the books? Unless or until the legislature comes back and denies that to local government, you are going to have a maze of conflicting, inconsistent regulations on the same subject matter, and as I pointed out before, that's an entirely different proposition from a home rule charter where the people get to see the document, get to discuss it, debate it, and then vote on whether they want it or don't want it. You are in effect, if you adopt this section, creating a home rule charter in every parish and every municipality of this state, giving to local government unlimited power without any right of the people to vote on it, consider it, or even think about it, even though several areas in this state have rejected home rule charters already, St. Bernard Parish being the most recent and notable case that I can think of.

Further Discussion

Mr. Roy: Mr. Chairman, ladies and gentlemen of the convention, not often am I going to get up here and ask you not to vote for a particular section. It's not my nature generally not...to operate that way, but the rule for 17 says that anything before the convention has a good reason. It generally means that you've got to have a little more than just a majority vote plus one of the people in an area when you're dealing with something that is as controversial as what we have attempted to do here today. Mr. Willis asked the question, this is a government of the people, by the people, and for the people, and makes the assertion that that's what we ought to do, allow home rule, because that's the most local or lowest form of government. All I say is I agree with that, but let's not constitutionalize upon the people of our state, the absolute inability to choose the type of police jury representation they want. You know the same people in this state do not want police juries to have arbitrary and complete power, and that is the reason why they reject home rules and they have in the past, like in St. Bernard, and some cities don't want home rule charters and that is the reason why they keep those charters under the Lawason Lawason Act so that they can go to the legislature when they have a problem, and all I'm saying here today is we have under Section 8, which I was against because of a basic philosophical view; nevertheless, you in your wisdom have allowed that under Section 8 any municipality, any parish governing body may choose to select a home rule type charter and operate, and give all these huge, unbridled almost, powers to their police jury representatives. That's fine, but you're being a bit as this time to say irrespective of what those people want, we're going to impose it on you. I really, sincerely believe that the only way you get compromise, in the end, that is meaningful is sometimes when you force it. Obviously, we haven't been able to force the compromise on some people here who are in favor of home rule are convinced that I'm in favor of home rule, but not the type home rule that imposes upon the people of a particular area an absolute duty to accept something that we put on them, and I urge you to vote against the adoption of the section.

[Motion for the Previous Question rejected: 17-71.]

Further Discussion

Mr. Arnette: Just very briefly, I'd like to point out to the delegates who come from an area who presently have a home rule charter: Section 9 does not affect you in any way. It does not change your charter; it gives you the powers you've given your local government--it doesn't change them a bit. All this does is affect those areas who do not have home rule charters, and I think those areas ought to have the right to home rule also, and I urge you to adopt this section.

Further Discussion

ciate the opportunity that the convention gave me today because I spent more than my fair share up here last week. I rise in support of this Section 9 and I would like to explain briefly why I do so. First of all, I think we need to review the language of this Section 9, and particularly paragraph (A) of that section as it now reads, because I think we argued about powers and functions that are granted by this section which I simply do not read into the language that now remains. Line (A) reads as follows: "Subject to and not inconsistent with this constitution, any other local governmental subdivision may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs," and I repeat "for the management of its affairs not denied to it by its charter or by general law." To me that simply says that these local governmental subdivisions which are affected by this particular section are given the right, the flexibility to manage their own affairs. I say to you, what is more right than giving to the local governmental subdivisions the right and responsibility to manage their own affairs? It's difficult for me to understand how argument can be made that legislators from, say, North Louisiana are more familiar with and have greater insight into the problems of the city of Opelousas, for example, than would the local governmental officials of the city of Opelousas; and that therefore we ought to leave the law and the posture that legislators from all over the state are going to tell the city officials of the city of Opelousas how to manage their own affairs. It seems to me that this language merely states a principle that we believe that local governmental officials should have the right to manage their own affairs. I don't read into this the dire consequences that Mr. Avant sees with it. It doesn't have anything to do with the exercise of the police power; it doesn't have anything to do with the levying of taxes; that's all been stripped from this section. It simply gives to the local government the right to manage its own affairs. To suggest that that could be done in an arbitrary and capricious manner is to overlook the jurisprudence of this state, which requires that all local regulation be reasonable, and strikes it down if unreasonable and arbitrary and capricious. Under these circumstances, we merely say to local governmental officials, those that are covered by 9(A), that you have the right to adopt reasonable regulations which are required and necessary for the management of your affairs, and I find it difficult to understand how anyone can object to that kind of a principle. It's almost like saying we're for motherhood. I think that under the circumstances, if we believe in home rule, if we feel that we need home rule of consequence in this state, we ought to approve Section 9 as it now stands, and move on about our business. Senator De Bileux, I be glad to answer your question.

Question

Mr. De Bileux: Mr. Kean, from the language you just read, is there anything that a local subdivision could not do under this section that they could do if they had a home rule charter?

Mr. Kean: Yes, sir. I think that the language of this section, and organization, and you have a right to perfect your home rule charter to provide

of inclusion of those within its charter to some protection against legislative interference.

Mr. Perez: Mr. Chairman, and ladies and gentlemen of the convention, I just want to strongly urge you to support this section. This section has been endorsed wholeheartedly, not only by the municipal association, the police jury association, and by a great majority of the police juries throughout the state, and when you vote, I suggest that you think about all those various endorsements.

Mr. Lanier: Mr. Chairman and fellow delegates, what we're dealing with here is the right of the people in those units not covered by Sections 7 and 8, to administer their own affairs efficiently without the constant necessity of having to run to the legislature to get authority to do things which are of a local nature. Presently under our law in the State of Louisiana, we're operating under what's called Dillon's Rule, which means that local units of government may or may not exercise such powers and functions which have been specifically granted to them. The problem with Dillon's Rule is it was concocted at a time in our history, back in 1868, when we were primarily in a rural economy, slow moving; we did not have mass transportation, we did not have mass media; we were not a highly mobile society. This is no longer true today. There are many thousands and thousands of people in our state who live under police juries. They have to look to the police juries for all of their services. If the police jury does not have specific authority to cure the ills of the people that they govern, they must get legislative authority or else they cannot act. Now, we were previously discussing the question of faith, and we were previously discussing the basic theory of government as set forth in our Bill of Rights. In our Bill of Rights we say that all government originates from the people, is founded on their will alone, and is designed to help the individual and do what's best for the whole. If we agree with the proposition that government originates from the people, then, of course, when we established our Legislative Article, we put all of the legislative power in the legislature. This power is there from the people and also from the Tenth Amendment of the United States Constitution. Why do we want to resist so much, giving the right to self-determination back to the local units? As pointed out by previous speakers, who are the people that live in the local units? They are people like you and me. Should not our government have the capability to

here. If the legislature feels that there is a necessity to make an overall game plan for the administration of laws in this state, under this proposal they have the absolute right to do so—the absolute right to do so. They can make the game plan, and if they feel that a local subdivision would be affected under this section would have to follow this is specifically

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constitutional...". Fellow delegates, I urge you in the strongest manner that I can to please adopt this proposal.

[Quorum Call: 100 delegates present and a quorum. Previous Question ordered. Section failed to pass: 88-41. Motion to table reconsideration rejected: 41-58. Motion to reconsider pending.]

Reading of the Section

Mr. Poynter "Section 10. Powers of Local Governmental Subdivisions; Liberal Construction

Section 10. Powers and functions of local governmental subdivisions shall be construed liberally in favor of such local governmental subdivisions."

Explanation

Mr. Burson Mr. Chairman, fellow delegates, I had passed out to you earlier today, by the staff, a copy of page forty-two of the constitution of the State of Illinois, one of the most recently adopted state constitutions. You will note in Subsection (M) of Section 6, powers of home rule units there, which I had underlined, the statement that powers and functions of home rule units shall be construed liberally. Similar statements are contained in Section 34 of the State Constitution of Michigan, which was adopted in 1962, and Section 1 of Article XI of the recently adopted State Constitution of the State of Alaska. The purpose is simply this: The tradition in many cases, is that the powers of local government have been strictly construed so that the power of local government to act on a particular problem, when subjected to a law suit in a court of law, the court will look very carefully at the language of the constitution or charter of the home rule unit and will construe that language strictly, rather than liberally, in favor of the exercise of home rule powers. In its study, Goals for Louisiana, prepared during the McKeithen administration, one of the goals listed under local government is that any power constitutionally vested in local government should contain an admonition to the judiciary that a liberal construction of home rule powers over local affairs; and this is purely and simply what this section is. It is simply an admonition to the judiciary that they should construe such powers liberally rather than strictly. It is a legal term of art; it has no other meaning so far as I am able to ascertain, and it certainly has no other intent in the minds of the committee. I'll answer any questions. It seems to me the decision on this point is rather simple; you're either for a liberal construction of these governmental powers or you're for a strict construction, and I don't really see any middle ground or really any other subsidiary issue involved. I submit to you that the failure to adopt a provision similar to Section 9 would raise in my mind a substantial need for such a section. I'll answer any questions.

Questions

Mr. Roy Mr. Burson, you don't mean to imply that that Section 10 is only a procedural and not a substantive admonition to the courts, do you?

Mr. Burson No, sir, I didn't distinguish between procedural and substantive. I said it is an admonition.

Mr. Roy But why not just a fair construction, neither strict nor liberal? Why not fair?

Mr. Burson Well now, Mr. Roy, I think a lawyer as skillful as you are knows that the contrast made in any area of the law is between liberal versus strict. I've never heard of fair or anything in between.

Mr. Roy I meant, why not nothing said, just as it should be, because you know yourself, don't you, that even if the legislature attempts to deal with

something specifically and it is somewhat vague, no matter if one hundred five members of the House and thirty-nine members of the Senate meant for these cities not to be able to do a certain thing, if it's at all vague and you impose upon the court a liberal construction in favor of the city, automatically the legislature's intent will be vitiated? Isn't that true?

Mr. Burson No, I don't think that's true at all. I think that we have traditional liberal construction for instance, in the area of workmen's compensation, and I don't believe that has vitiated the intent of the legislature.

Mr. Roy That's right, and doesn't that mean, Mr. Burson, that even with respect to procedural laws of evidence that the courts in compensation cases will even take in hearsay evidence because it's a compensation case when they can't take it in in any other type case?

Mr. Burson That's done by statute in that particular instance.

Mr. Roy No, Mr. Burson, it's done, isn't it, because the court says that you must give this a liberal construction since it's remedial legislation? Now tell the truth, isn't that right?

Mr. Burson The courts say--I always try to tell the truth, Mr. Roy--the courts have said that the workmen's compensation statute is humanitarian legislation and is to be liberally construed, but the particular item that you referred to, the taking in of some forms--medical reports primarily--of hearsay evidence is specifically authorized by the statutes.

Mr. Roy No, no. Let me get a little more specific than that, because obviously you're trying to make a distinction without a difference. With respect to a person testifying on hearsay evidence, a wife about what her husband told her, is that not hearsay and isn't it admissible in compensation cases because the courts give it a liberal construction even as to evidentiary rules, irrespective of medical reports?

Mr. Burson Not in my experience. No.

Mr. Roy Do you want me to cite you a few cases? Would you change your mind?

Mr. Burson Mr. Roy, I'd be happy to change my mind...

Amendment

Mr. Poynter Amendment No. 1 [by Delegate Abraham], on page 6, delete lines 9 through 13, both inclusive in their entirety.

Explanation

Mr. Abraham Ladies and gentlemen, the purpose of this amendment is to delete this Section 10. I don't see the need or the purpose of such language. We've given in Section 8 and Section 9, we've given the local elements broad powers, and to put language in here which says "it shall be construed liberally in favor," is just to me confusing language, and will simply confuse the whole article just that much more. I don't see the significance of such language. I can't understand just what is meant by "construed liberally." How liberal is liberal? I think we're just burdening our constitution with some language that pays lip service and doesn't really do it any good, and I see no need for it; and I urge the deletion of this particular section.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, I think this is a good example of what happens when people get carried away with their own ball of wax or interest. This section is not even statutory in nature, much less constitutional. You wouldn't even have a

pretation. What this government in effect says is that "courts, you should be biased, biased in favor of local governments." If there's a controversy between state government and local government, be biased in favor of local government. If there is a question between an individual citizen and a local government as to whose rights you're going to protect, favor local government. It says, "Don't read the law fairly and construe it as written..." This provision says to the judges of our state courts, "Don't read the law fairly and do what the law says in a given case; be biased in favor of local government; construe things liberally in their favor." We didn't even do that in the Bill of Rights in protection of individual liberty. We didn't say "construe these rights liberally in favor of the individual, judges." We didn't say that, but here's the one instance, the one part of our government which ought to be given the benefit of the doubt; things ought to be read in their favor; we ought to be biased toward them. It doesn't make sense. What you can do if this thing is included in here, you can take every general statement in this constitution regarding local government, construe it as broadly as you choose, as strongly as you can against the rights of the individual citizen, as strongly as you can against state government, and that's the way it's susceptible of being interpreted under this provision. Let's don't have any bias in this constitution. Let's have our law read as it is written, with no special rules of construction favoring one entity of government over another, or over individuals; so let's adopt Mr. Abraham's amendment.

Questions

Mr. Weiss: *Mr. Jenkins, would you say that the constitution of the State of Illinois is biased?*

Mr. Jenkins: I think in this provision it's not only biased, but utterly ridiculous.

Mr. Weiss: In other words you are aware of the fact that Article VII, Section 6 (H) reads "powers and functions of home rule units shall be construed liberally."

Mr. Jenkins: Yes, I'm familiar with that, and I think that constitution is dead wrong; it's absurd. It is biased and I don't want something like that in our constitution, and I don't know of any other state constitution that has something like that in it.

Mr. Guarisco: Mr. Jenkins, wouldn't you even be against this Section 10 if it said that the functions shall be construed strictly?

Mr. Jenkins: Yes, that wouldn't make any sense either. There's no reason to have a bias against local government. Let's have this language in this article interpreted as it is written without any particular discrimination in favor of it, against it, or whatever.

Mr. Hunez: Mr. Jenkins, wouldn't you be against this section regardless of what it said?

Mr. Jenkins: I would be against it if it gave one entity of government a special advantage or bias over the other. If it said that state government was to have a bias against local government, I would be against it. If it said that local government was to have a bias against state government, I would be against it.

Further Discussion

Mr. Hunez: *Mr. Jenkins, would you say that the constitution of the State of Illinois is biased?* I know that it is, and I know that it is biased in favor of local government. However, Section 10 as written, is absolutely horrible. It puts the local government ahead of the state government, and of the individual.

ahead of everyone. It's a constitutional mandate to the Louisiana Supreme Court that they not construe any statute or any contract in favor of the individual, only in favor of the state. There is a concept in our law that statutes should be strictly construed. For example: Criminal statutes should be strictly construed; you don't favor the state in criminal statutes, you favor the individual. We, we adopt this section, we are constitutionally mandated by the Louisiana Supreme Court to find that a statute or an ordinance, an ordinance of a city that may call for a misdemeanor that would sentence a person to six months in a parish prison; we're saying you construe that ordinance favorably, favorably, to local government. That's absolutely ridiculous; it's absurd. Mr. Abraham's amendment is a very good amendment; it leaves the question up to the courts, where it properly should be.

Reading of the Section

Mr. Poynter: "Section 11. Home Rule Parish: Incorporation of Cities, Towns, and Villages"

Section 11. When two-thirds of the electors, as certified by the registrar of voters of an unincorporated settlement in any parish operating under a home rule charter or a home rule plan of government sign and present to the governor a petition and meet other necessary requirements as set forth under the general laws providing for the incorporation of cities, towns, and villages, such cities, towns, and villages may be incorporated. However, no such newly incorporated area shall include any property previously included in any industrial area or district."

Explanation

Mr. Briggs: *So what is in this controversial amendment?* First of all it's controversial for a number of reasons. It was controversial on the committee; it passed by an eight to seven vote. I would not want to allay your fears by saying that the committee felt that it was unanimous, but it did pass by an eight to seven vote. We had a number of problems with this particular section. There have been some people that felt that this was a racial issue, something that was devoted entirely to the area of Scottdale within East Baton Rouge Parish. However, it is not so. We felt, or the prevailing side of the committee felt, that this was not only a problem within the community of Scottdale, but also in East Baton Rouge Parish, but also throughout the State of Louisiana. It is not just a problem of the right of a village to incorporate, or community to incorporate themselves into a village, but it gets down to the basic right of an individual, that individual being in a community, free and individual, free of all problems, of all things that would hamper his growth, but yet some home rule parishes deny this individual, really they deny this individual the right to vote because they tell this individual that no matter how many people they have in this community, they still cannot incorporate themselves. That's what we felt in the committee on the prevailing side, that when two-thirds of the electors in an unincorporated area felt that they desired to incorporate themselves into a village, town, city, etc., that they should have this right to do so. We felt that if we had one side of the committee that would say that no one in East Baton Rouge Parish, or in any other parish of the State of Louisiana, should be denied the right to incorporate themselves into a village, town, city, etc., that they should have this right to do so.

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Baton Rouge, and that was passed in 1949, was that there should be only three incorporated communities, being Baton Rouge, Zachary, and Baker. But, things have changed since 1949. Things have changed, and there may be times coming in the future that we will need changes. There should be a proviso giving the authority for people to incorporate themselves into villages. If you feel very strongly in human rights, then you must pass this section. If there are any questions, I'll be happy to answer them.

Delegate Bollinger in the Chair

Questions

Mr. Abraham Terry, just to be sure that I understand this correctly—if you have a parish that's operating under a home rule charter and a village became incorporated—now does it withdraw from under that home rule charter?

Mr. Reeves I would not envision it would. If it was a parish home rule charter, it most probably would not.

Mr. Abraham They would still...I have to operate under the provision of the parish home rule charter.

Mr. Reeves Of the parish, yes.

Mr. Abraham Suppose, now this would apply only to the electors of the particular village that might be involved, it's not the electors of the entire area which operates under the home rule charter, is that correct?

Mr. Reeves Yes, sir. This is true.

Mr. Abraham Why did not the committee feel that the entire area of the home rule charter should make this decision, since they all voted originally to go under the home rule charter?

Mr. Reeves We felt that this was a right, just as a right to vote, that the right to incorporate was a most sacred right, and it was just as valid as actually, the right to vote.

Mr. Abraham Well, did not these people, though, originally vote to go under the home rule charter?

Mr. Reeves Well, originally, probably the south chose to also have slavery, but I hope that we will never go back to that system.

Mr. Abraham Well, don't get me wrong. I'm just trying to find out the reasoning behind all this, is the purpose of this thing. I don't quite understand the section as to why we have singled out this particular thing.

Mr. Roemer Mr. Reeves, in the lines 23, 24 and 25 that have to do with industrial area or district. Now is that presently in the statutes, or is that in our old constitution, or whence cometh such language?

Mr. Reeves It cometh from the old constitution. I believe, Mr. Roemer, to the best of my knowledge.

Mr. Roemer It is in the old constitution?

Mr. Reeves I believe this is correct. I'd have to...

Mr. Kean Mr. Reeves, as a matter of fact, isn't this section directed primarily to a situation in East Baton Rouge Parish?

Mr. Reeves This situation is not directed to East Baton Rouge Parish. East Baton Rouge Parish is an example of the inequities in which this could possibly be true. It is an example of what a situation could happen and has happened. But this is not directed specifically to East Baton Rouge Parish, I think you are well aware, Mr. Kean.

Mr. Kean Mr. Reeves, if...in answer to your...to Mr. Abraham a moment ago, I think you indicated to him that if you had a parish home rule charter, and some area wanted to incorporate under this Section 11, that they would come under...they would still remain under the parish home rule charter. Was that the understanding there?

Mr. Reeves I would envision that it would still, above and beyond this, we felt, and I think that you realize that we felt on the prevailing side, that the idea of incorporation was just a sacred right and it should not be tampered with by any home rule charter, whatsoever.

Mr. Kean I am trying to understand your answer to Mr. Abraham's question. He asked you, if I understood it, that if you had a parish home rule charter and some unincorporated area sought to use this, would they then come out from under that charter? I believe your answer was "no." Is that correct?

Mr. Reeves This, to the best of my knowledge, and again I'm not...

Mr. Kean So that if in East Baton Rouge we have a parish charter, then this would not have the effect that the proponents of it would want it to have, would it?

Mr. Reeves I think it would. I think, first of all, we are guaranteeing that this right shall not be abridged.

Mr. Kean Even though it might affect the existing home rule charter?

Mr. Reeves Yes, sir. In other words what I'm saying, Mr. Kean, if you had in the home rule charter of East Baton Rouge Parish that slavery was permitted above and beyond this particular provision, we guarantee the right that all men, everywhere, shall be forever more free. Above and beyond that right of freedom, and alongside that right, is the freedom to incorporate themselves in a village.

Mr. Kean I take it, then, that under your theory, if the people of East Baton Rouge Parish wanted to secede from the State of Louisiana, they'd have the liberty to do so.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Haynes], on page 6, line 16, after the word "when" and before the words "of the", delete the words, the word "two-thirds" and insert in lieu thereof the words, "a majority".

Explanation

Mr. Haynes Mr. Chairman and members of the delegation, I believe in the fundamental principle of home rule. I live in an area of Baton Rouge that is one of the largest sections of this city. I live in Scotlandville, Louisiana, where Southern University is located and has been located since 1914, and where many, many, many of our industries are moving into the area, a community of some twenty-five to thirty thousand people who are citizens of this community. I was amazed when I moved to Baton Rouge about twenty...twenty-five years ago to find out that they...there were a lack of services in this community because it was not an incorporated community. I was amazed at the lack of police protection. My own house, as meager as it might be, has been broken into three times within the last few days. Our own son's home was broken into rather recently, without the kind of police protection that's characteristic of the city or our capital of the State of Louisiana. Our garbage collection is not adequate. Our library services are poor, indeed. Then the general care of the community, to make it a city or a community of which all of us, as Baton Rouge people, could be proud. I believe

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what rules govern them at all? So this is the problem that I get into and I don't think...I don't think that the delegates are looking at these things from an analytical standpoint at all. I wish that we all would.

I would certainly entertain some explanation as to how you justify this type of autonomy and not allow a larger unit the same autonomy.

Questions

Mr. O'Neill Mr. Duval, if you can't justify the autonomy of this section, how do you justify the autonomy of Section 19 which sets up historic preservation districts?

Mr. Duval Well, I'm not trying to justify Section 19, Mr. O'Neill. If you really want me to answer your question, I would vote for this and for Section 9. I think that's philosophically consistent.

Mr. Roemer Mr. Duval, as I understand it, you have your mind made up on this section, that you're in favor of it as presented by the committee. Is that correct?...surmise?

Mr. Duval Yes.

Mr. Roemer Then what you are really up there saying is that you know what you are going to do, but you are a little bit confused as to why the rest of us are doing what we are doing. Is that correct?

Mr. Duval That's right.

Mr. Warren Mr. Duval, I'm...in the city of New Orleans, the whole New Orleans...parish of Orleans is the city of New Orleans...now I see on this little pamphlet that the city of Baton Rouge and East Baton Rouge, then you have Baker and Zachary, and then you have prohibited the others...wait, I'd better read it. It says, "The city of Baton Rouge and parish of East Baton Rouge, which prohibits the incorporation of communities other than Baton Rouge, Baker and Zachary..." Now I'm wondering why that these other, East Baton Rouge, Zachary and Baker, decided that they did not want to be the same as a parish government. Then why was the prohibition against the others that had might want to join it? Why was the prohibition? You see, I'm not asking this on a racial issue and I'm really sorry it came up. But I'm trying to find out here why the prohibition came about.

Mr. Duval I cannot answer your question. I don't know.

Mrs. Warren Thank you.

Mr. Winchester I'm in a dilemma. I'd like to grant home rule to St. Mary Parish, but I would, also, like to grant the right to any part of the parish to incorporate it. How do I vote?

Mr. Duval You vote "yes" to this, and you vote "yes" to nine when it comes up tomorrow, I would imagine.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I rise in support of this amendment. I agree as Mr. Reeves says, this amendment is not specifically aimed at any particular parish form of government. We are presently constitutionalizing home rule charters. What we have offered is a home...is a provision, a constitutional provision allowing unincorporated settlements, under the home rule charter, to incorporate.

Judge Dennis, about three days ago, introduced an amendment that pointed to the dangers of discrimination involved in certain charters. I suggest that there are home rule charters which you and I disagree about. I'm suggesting that this provision attempts to allow unincorporated settlements to incorporate. Now you can tie it up with being aimed

at Baton Rouge Parish, or Plaquemines Parish, or something like that. It is not. As a member of the committee who voted it out, it is not. The reason why we bring up the issue of Scotlandville is because that is a ready example.

Presently, if the legis...presently, throughout the State of Louisiana, throughout the State of Louisiana, you can incorporate, unincorporated settlements can incorporate, in sixty-two of the other parishes, even some that exist presently under home rule charter. Secondly, while we talk about this matter of incorporation, that if one believes in the process, and I understand the dilemma, but if we are talking about home rule, isn't it kind of peculiar that folks who get the home rule don't want to extend it further than...where they...you know, from their own grabs, or from their lap of power. You know, how far does home rule go? You know it's the same argument we can sit here and wage that proponents of this article have waged against the legislature. I'm suggesting that it is a right, by law, that throughout the State of Louisiana, unincorporated settlements can incorporate. Mr. Hayes is going to get up here and tell you about some of the problems. But not only do they not get adequate garbage protection, but all the garbage is dumped in that particular unincorporated settlement. It justifies by saying it's sanitary and it's clean. I would ask your support of the amendment as produced by Mr. Haynes. I think it is a good section, it's a good amendment. I think if we are interested in bringing home rule close, then I suggest that this is close as you can get it.

Questions

Mr. Juneau It appears that the only thing that is consistent is the inconsistency. Let me see if I understand it.

Do you favor the concept of home rule?

Mr. J. Jackson I said that in the committee, Mr. Juneau. Yes, I do.

Mr. Juneau Then, when we voted on the previous section, you voted against the previous section?

Mr. J. Jackson Well, if you want to question my vote on that, it was because I decided that it was imposed. All I'm saying, we provide the mechanism if people so choose. They don't have to take advantage of it, and that was my reasons because it was being on imposed, and in the parish of St. Bernard, the people had defeated it.

Mr. Juneau I'm just trying to find out, Johnny, what you think is the consistent vote. You voted "no" against the previous section and then want us to vote "yes" on this section. I'm really confused.

Mr. J. Jackson Well, I'll answer it for him, but I thought I did, but, you know.

Further Discussion

Mr. Avant Mr. Acting Chairman and fellow delegates, and Mr. Duval. Where is Mr. Duval? Mr. Duval said that he can't understand why some of the people who had voted against some of the proposals of this committee would be for this section. Well, I'm going to tell you why. Because we happen to know all about home rule. Let me tell you a little bit about home rule. I made the statement the other day, and this is in answer to something Mr. Kean said, that this charter that we have is one of the oldest and one of the best in the state for some people. For some people, we've been talking about home rule, we've got a community of thirty to thirty-five thousand people right out here just over the Airline Highway from this city, go look at the blessings of home rule. Go see the sanitary sewer system they have, the fire protection they have. Go south to the subdivisions south of the university, just outside the city, just as densely populated as any part of the city of Baton Rouge. Look at our fire protection. You know what our fire protection was for the sixteen years I lived there? Your three-

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Further Discussion

Mr. Wall Mr. Chairman and fellow delegates, it's difficult for me to understand why the advocates of home rule, why the advocates of home rule... talking about we should let people do what a majority wanted to do. If a majority in local government want to do one thing, we should let them do it. How these advocates can get up here and oppose this...let's just be very honest about it. Scotlandville has some unique problems. Scotlandville has some unique problems as compared to the problems of the rest of the parish. Now, they have all the problems and the issues of the rest of the parish, then they have some unique problems. And where you would want to make Scotlandville have a two-thirds vote and everyone else just a majority... you know what, it's just like a long time ago. We used to expect the black people to work, you know, about twice as hard as we do...so it's no use in two-thirds more. So we may as well just put them on an equal basis and let's just let them have a simple majority out at Scotlandville like we have in the rest of the state.

So, let's vote for this amendment.

Further Discussion

Mr. Jenkins Mr. Chairman and delegates, back in 1947-48 when this thing was considered, the fact was, you know, there weren't very many black people voting in East Baton Rouge Parish, certainly not in Scotlandville, and our home rule charter passed by maybe a hundred, two hundred votes. I do not know exactly what it was, in one of the smallest turnouts in the history of the parish. Now Mayor Heine says he'll be for Scotlandville having their own municipality whenever the people of Scotlandville are for it. Well, on two separate occasions the people of Scotlandville have voted for being able to incorporate, but parishwide, it failed. But the people of Scotlandville have been true to it, all for it...will continue to be for it. Now the only question here is whether or not it should be a two-thirds vote or a maj...a two-thirds of the electors on a petition or a majority of the electors on a petition. I took a survey in my own district when I ran for election to the legislature, and found that thirty percent of the people registered in my district, did not live in my district. They had moved...still voting there. Of course, some living in my own district were voting other places. A two-thirds vote is simply too high because registration rolls generally don't keep up with who lives in the district. A majority is a very high figure in itself. Certainly a majority is preferably to two-thirds.

But the section as a whole deals with a much broader question... not just with Scotlandville. Scotlandville is the particular instance under consideration. The real question is, when a parish has home rule, will individual groups within the parish still maintain their individuality? It's true in East Baton Rouge Parish, it would be true in Plaquemine, it would be true in other parishes. Will groups within the parish who want to have a municipality, be able to have one or not? Certainly they should, whether it's two-thirds or a majority or whatever, they should be...have some means where they could incorporate individual groups within a majority of the rest of the people don't want them to. We've been...it's been said that the people who come up here in favor of this section are being inconsistent. I can't think of anything more inconsistent than all the people who say how much they are for home rule who come up and oppose a provision like this giving individual groups within a parish the authority to have their own form of government. Now, I'll admit to you, I don't like the concept of home rule set forward by this group. I think it gives far too much power to local government. But then point now, if we are going to have all that power to local government, shouldn't we at least give people within individual parish who want their own form of government, a right to get out of it, to dissent, to have their own system?

Now we've seen in Scotlandville as one example

a system of benign neglect. Those people have lived under our wonderful home rule charter here and have not had the basic things that they want to avail themselves of. Let's give them a chance. If a majority of the people want it, my goodness, how can we object to it in that area? So, let's go along with this amendment and let's approve this section.

[Previous Question ordered. Record v... ordered. Amendment adopted: 63-32. Motion to reconsider tabled.]

Amendment

Mr. Poynter Now these are the Abraham amendments which Mr. Abraham withdrew that Mr. Kean wants to offer in his name.

Amendment No. 1, on page 6, delete lines 9 through 13, both inclusive in their entirety.

You're right. It should be 14 through 25.

These are some old ones to go with it.

14 through 25, delete lines 14 through 25.

Explanation

Mr. Kean Mr. Chairman, I offer this amendment in order to endeavor again to explain the benefit to the delegates of this convention, my position with respect to this matter.

As I view the amendment, what we are being asked to do here is in this convention, amend the plan of government of the parish of East Baton Rouge when there is ample authority within that plan for its own amendment. Now it seems to me it's not a question of home rule, or ho...or individual liberty, and certainly there has been no question of race with respect to this matter on my part. Mr. Reeves was the one who injected that thought. I endeavored to explain before, and I repeat. We have adopted in East Baton Rouge Parish pursuant to the constitutional provision the plan by which we have endeavored to carry out our governmental functions in that parish. Despite some of the comments that have been made about what a terrible job has been done, I say to you that since this plan has been in effect, that over sixty percent of the urban area at the time it went into effect did not have sanitary sewerage. Through a centralization of effort, we have provided major sanitary sewerage throughout the parish, including Scotlandville. Scotlandville has garbage collection, it has street lights, it has the other amenities that go with an urban area. My whole point with respect to this matter is that if there is a need for a change with respect to the plan of government in East Baton Rouge Parish, it ought to be decided by the people of that parish.

I say to you to place this particular provision in the constitution, to provide that it shall occur in East Baton Rouge Parish without any consideration of how it would fit into the plan of government, could have the effect of destroying the plan of government as we view it today. Now I don't believe you delegates out here want to do that. I don't believe that you want to inject yourselves in the affairs of East Baton Rouge Parish. I don't think you want to require something to be done in East Baton Rouge Parish without having any consideration, or giving any consideration to the effect, it would have upon the whole entirety of the government of that parish. I don't believe there's a single person out here that wants to be a party to that. I implore you not to undertake through this proposed section to bring about a situation which results in an amendment to the plan of government, in my humble opinion, its ultimate destruction.

I don't know what the problem is with this matter. Perhaps it's me. But there is an unusual group of people who now, all of a sudden seem to support this proposal. I ask you to lay aside your personal feelings insofar as I might be concerned...to lay aside your feeling with respect to any position I might have heretofore taken, and view this matter as an important issue presented to this convention and the delegates which consist of it that bears upon the government of East Baton Rouge Parish and its continued existence as it now stands, and leave, for goodness sakes, the internal arrangement

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We have voted twice on this point in East Baton Rouge Parish, and presumably, very shortly will vote again on it. That's where the vote ought to occur. What you would ask is the people of the State of Louisiana now voting on a proposal to amend the plan of government of East Baton Rouge Parish. Very understandably, if the vote on something was voted on which affected only a particular parish, it had to be approved by the people of that parish, and I have an amendment which I will offer shortly, if this matter passes, which I hope it does not, which will provide that if this particular section is kept in, that it will have to be approved by a majority of the people of East Baton Rouge Parish. It seems to me that's consistent with the provisions of home rule as I see it.

I ask that you not inject this convention in East Baton Rouge Parish politics...not inject it in a matter of amending the plan of government of East Baton Rouge Parish, and reject this, leave it to the people of East Baton Rouge to resolve their own problems.

this state that would require a majority vote of the people in that parish to allow an unincorporated town to incorporate?

Mr. Kean There is none and that's the reason I say, Mr. Newton, this section is directed directly against East Baton Rouge Parish.

Mrs. Warren Mr. Kean, from my question you can gather that I am really a "people person."

Could you tell me why East Baton Rouge Parish would want a group of people to be in their parish and under their government that wanted their government of their own, that they were home rule... rule charter?

Mr. Jean Warren, as it was originally planned, we were attempting to avoid the kind of situation that they found down in Dade County, a need for some kind of a government to meet the overall needs and they simply couldn't deal with their problems. All we were trying to do was to prevent, in the out-set, a proliferation of municipalities which would affect the ability of the parish to deal with their problems on an overall basis.

Mr. Kean, you already have four now...

Two...three.

Mrs. Warren Well, you have Zachary and...

" Kean Baker and Baton Rouge.

When you've got East

East Baton Rouge Parish is the parish

Mrs. Warren Right, well, I mean this is separate, though. Am I right, you see, because I'm a little bit dumb. I'm trying to find out.

a separate governmental entity. That is correct.

Mr. Warren: Right. Now, I still pose the same question. If you were to say, 'I have three sons and I want to be on their own, you wouldn't have their responsibility if they were on their own'.

Mr. Ryan: Well, the problem, Mrs. Warren, as I see it is that if we are going to have additional municipalities in East Baton Rouge Parish, which this would permit and encourage, then we ought to have some idea how that's going to fit into the overall governmental structure. That's the reason I say that this matter ought to be left to the people.

ple of East Baton Rouge to resolve.

the affairs of Baton Rouge. Are you writing a constitution? Do you

Mr. Hayes Do you call writing the constitution
meddling?

Mr. Kean Well, if it has the effect of dealing only with one parish and the plan of government of that parish, I would think that's what it amounts to.

Mr. Hayes Did you answer a question just now saying that you had only one parish that had a prohibitive clause, or something to that effect?

Mr. Kean I said that the only parish that has a provision against the further incorporation of municipalities is the plan of government for the parish of East Baton Rouge. That's the reason I say that this is directly aimed at East Baton Rouge and would affect nobody else but East Baton Rouge.

Mr. O'Neill Mr. Kean, the provision in our home rule charter is contradictory to the general law of the state, is it not?

Mr. Kean. No, not as I see it when it came to the provisions of Article XIV, Section 3 (the constitution which authorized the plan of

"I mean," he said, "that it applies to all the parishes. All I'm saying is that it applies right now to East Baton Rouge Parish."

Mr. Roy Mr. Kean, didn't we, the people, have to authorize this East Baton Rouge Parish back in 1946 or '48 to adopt this plan of city...

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Mr. Kean That's correct.

Mr. Juneau If I do that, I, as a delegate from Lafayette Parish or Calcasieu Parish, don't have to determine what the people of your East Baton Rouge Parish have to?

Mr. Kean That's exactly my point, Mr. Juneau.

Mr. Juneau Thank you.

Further Discussion

Mr. J. Jackson Ladies and gentlemen, I'm going to try to be brief. The effect of Mr. Kean's amendment is to delete that whole section. When I first got up here, I said that we did not, the proponents and the people on the committee that got this amendment out, was not necessarily trying to suggest that this was a racial issue. We were saying why should the whole parish of East Baton Rouge vote on whether Scotlandville, and that was an example we used, but I can point to Central, I could point to other home rule charters that do allow for them to incorporate...all I'm saying, why must the whole parish vote on Scotlandville when in the rest of the state...in the rest of the state it doesn't require that kind of the whole parish voting on whether any other incorporated settlement wants to incorporate. On the matter of this constitution injecting itself into the home rule charter I said very clearly on my first remarks that this is a constitutional convention. We have constitutionalized charters as such. If we are going to constitutionalize home rule charters, we ought to be able to make provisions for home rule... constitutional provisions to allow unincorporated settlements to do it. That's the only way you can do it. I would just like to hope you put some weight on those points that I've just made.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, during the past few days, the delegate who is presenting this amendment, which would delete this section, has been speaking to us a great deal about home rule. It seems to me now that his amendment seems to want to deny home rule. It reminds me of the Catholic girl who was very much in love with a Methodist boy. She insisted that he become a Catholic, and he was converted to Catholicism. He embraced the Catholic faith. He was carried away with it. He was fascinated by it. So much so that he decided to enter the priesthood, and he left the girl. The point is she oversold his case for home rule. Thank you. Thank you, John.

I think there's something very basic here that this convention does understand the issues that are before us. It is a question of whether or not we feel that people should have certain basic rights or whether we feel that a particular article of incorporation is the thing that is sacred. I submit to you that this is an effort to give right to people, that we should reject this amendment, and we should go along with the section which is provided.

Mr. Lennox Reverend Stovall, do you know that I plan to go to the next annual conference of the Methodist Church in Shreveport and arrange your next duty station, which you can rest assured will be Bralhtwaite, Louisiana?

Mr. Henry Would you yield to a question...

You're not going to yield...

Reverend Stovall says that he's going to go in peace.

Mr. Avant.

Further Discussion

Mr. Avant Mr. Chairman and fellow delegates, I just want to remind you of a few facts. Within the very shadows of this seat of government we have over here, this State Capitol, you've got thirty-

five thousand people who for a quarter of a century feel that they have not gotten a fair shake under this home rule charter that we're talking about. In that community is a large state university. If by some exercise of mental gymnastics you can consider then that that is a matter that concerns only the people of East Baton Rouge Parish, so be it.

Mr. Chairman, I move the previous question.

[Voice of the People of Louisiana]

Further Discussion

Mr. Reeves Mr. Kean has said many times in the committee and before you today that it's not any of your business what goes on in East Baton Rouge Parish. It's not any of your business. You extent shouldn't care when thirty-five thousand people are denied the right to incorporate themselves into a village. The right to participate in a great democracy, the right to be citizens of the greatest state in the United States of America, which is the greatest nation on earth. That is what Mr. Kean has told you, but the charter of East Baton Rouge Parish is so great, so mighty, and so noble, it was conceived by men of immaculate taste and that they do no wrong. This is what he is saying, but I say to you that from the great parish of Winn somebody does care and representing three rural parishes in North Louisiana, I care. I feel that you care too...for thirty-five thousand, basically to a large extent black people, have been denied the right to incorporate themselves in a village, denied the right by a group of little city planners, of which I happen to be a city planner, and I'm very ashamed of my profession at this time, because they sit down with their little maps and their little pieces of paper and they say to you that you don't need anymore cities in East Baton Rouge Parish. We know what's best for the people of East Baton Rouge Parish. We got it all right here. See. We went to school. Let me tell you something. It doesn't matter to me how many schools you want to or how many schools you didn't go to. The right to incorporate yourself within a village or a community, or a city is just as sacred as the right as the vote. You have the right shall not be denied by this Constitutional Convention. It cannot be denied, and it is your business. It's your business in Acadiana across the great South Louisiana of which I love dearly. It is your business. It is your business! Very, very much it's your business. It is your business to vote this amendment down. For no longer shall East Baton Rouge Parish discriminate. For no longer shall it be held...the people held in bondage. Let my people go! Let them go and be free for evermore. These people have a right to incorporate themselves, and I think you think so too. You're going to say "no" in such a way that there'll be no more amendments to delete this section, but only amendments to make it more perfect. These people have a right, a great right, to incorporate themselves. They have a right for sewer, fire protection, police protection, and besides that you have a right to go out and protect Southern University because it's your money, see. My Mother in Winn Parish pays taxes just like your folks do. It's her tax money that goes into Southern University. That school has a right to be protected by a fire system within that area where the firetrucks don't have to come from the city of Baton Rouge out to protect it. This you must do. You must vote this amendment down. For evermore these people shall be free.

Further Discussion

Mr. E. J. Landry Mr. Chairman and members of this delegation, really and truly this is a great occasion for me, a learning experience. I hope that those of you who know about all of these situations, I hope that you will bear with us, those of us who sit and listen and learn, because some of us do not know until we've heard your debate. I want you to reason with me just a minute because I need your help now like I've never needed it before. I realize the concern of Mr. Kean, but I want to endorse wholeheartedly what Mr. Kean has proposed as a mem-

proposition. I know that what he is doing in the original proposition, in the proposal, is correct. I've been convinced that it's correct, even though I have voted consistently against many sections because I didn't think that they were completely needed. I've been convinced against the idea, but now you are beginning to hear these huge numbers in an industrial area, not one incorporated city within that area. I have been deluged with communications, with calls asking me for God's sake pass this provision some way, somehow, and grant to us the home rule that I have heard being advocated for the last several years, day before yesterday. I want you home rule people to need our help, and Section 11 does exactly what we need in St. Charles Parish. We need it badly, and I hope that you vote against Mr. Keane's amendment, not because Mr. Keane is providing it, but I hope you'll vote for his original proposal which is a very good one. This is the one of the committee as presently reported.

Further Discussion

Mrs. Warren: Mr. Chairman and delegates, it is really surprising that we would have delegates in this audience that would say that they want home rule and then want to deny persons home rule. The thing that disturbs me most is that you have got Zachary, Baker, East Baton Rouge in Baton Rouge and you have the other two in the other two parishes, and then you want to keep Zachary from having the same things. This is prejudice. I'm not going to stand here because the Chairman just gave me a few minutes. He gave me a break; I'll put it like that. He said he wasn't going to let anybody else speak, and he gave me the privilege. I couldn't help but come here and say to you that if you want home rule, please give these people the same things that you want.

Thank you.

Questions

Mr. Weiss Delegate Warren, is this the only home rule parish in the State of Louisiana that is being discussed here? Is there any other home rule parishes?

Mrs. Warren Dr. Weiss, I really didn't...from the beginning I didn't know. It did...the amendment didn't say that they were talking about Zachary. To be truthful with you, I'm sorry that that came up. It just said that these people would be able to have it if they want it. Since the subject came up that they have been denied that right, if they are in bondage, let them come out. That's all I'm saying.

Mr. Weiss: Don't you think people have confused the home rule of municipalities with the home rule of one parish in this state?

Mrs. Warren Well, I don't know if they're confused or not, but when I look down here and see that they have four...East Baton Rouge Parish has four separate municipalities, you might as well say they're governing their own selves. I don't see why you can't have another one. This is the only thing I'm saying.

the partial word and punctuation "rated." delete
the characters on line 25 and delete lines 26 and
25 in their entirety.

Received 10 May 2004

Mr. Thompson Mr. Chairman, fellow delegates, and

State and should not be in the constitution here. They're exempt by the industrial exemptions, etc. that are granted new industry. Now I feel like that they should have to pay for the garbage collection, the water, the electricity, the sewer things as well as the rest of the citizens have to pay for in these areas. It's a very simple amendment. I think this section in here, and I think it's a very good section. I think with this amendment deleting this part would be a much better section. So I urge adoption of this amendment.

Q Now, under the present law dealing with the creation of industrial areas or districts provides that if they provide their own municipal government, they do not have to be included in certain special districts or subject to municipal annexation. There are many parishes throughout this state which have adopted ordinances which require that two or three particular industries that have come to those areas with reliance on those ordinances. Would your amendment now mean that you would take away from those particular industries the right that they have had under those ordinances heretofore?

Mr. Thompson Do you think that they should have police and fire protection that's paid for by all the rest of the people if they haven't been contributing towards paying their rightful share of this? I don't. I think they should pay their share just like the rest of us.

Mr. Thompson: Under the present statute, under the present law, they're entitled to the exemption, as you must know, only if they provide those services themselves. I ask you again, the effect of your amendment would then be to take away from existing industries which have located in reliance on ordinances creating industrial area what they enjoy at the present time. Is that correct?

Mr. Thompson. Yes, and another thing is correct about it too...is lots of these districts are created just for that purpose, so they won't get these extra taxes.

Mr. Jenkins: Richard, the various industrial areas and industries in them, they don't get to vote in regard to whether or not to incorporate; they don't get to sign petitions; they don't get to put up assessed valuation when it comes time to being annexed or incorporated. Why should they be subjected to something when they are getting no benefit and don't get to participate in the political process?

Mr. Thompson They are getting benefit from this.

Mr. Jenkins: Well, if they're not in a municipality, how can they be getting police and fire protection by right? They can't be, can they?

Mr. [redacted] well, we can't get to some the grass from growing by excluding them forever? I don't think this should be done, Woody.

day we just had an industrial fire out here, and every existing fire unit in the community, publicly and privately, came. And there is only one unit that I know of that doesn't have that kind of equipment.

MR. CLARK: I think you have shown that the answer to the question is "yes" and that the answer to the question is "no."

Mr. Thompson That's exactly right. That's what I've been talking about.

Mr. FINE. — will it not be concluded as well the solution of this problem does not bring anything new from our existing knowledge? we said

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care of that when we get to Revenue, Finance and Taxation's Proposal?

Mr. Thompson This is exactly correct.

If there is no further question, I move for the adoption of the amendment.

Further Discussion

Mr. Wall Mr. Chairman, fellow delegates, this is a real serious question. I'm particularly glad to see Mr. Slay's name on this amendment. He's a tax assessor, so he's well aware of how this situation is, as to industrial parks and districts and how they are taxed. I'm sure he's going to have a few words to say, and he'll answer your questions. But now let me just tell you something. You take all these big industries that we have; they want to avoid all the paying of taxes to the local community. They want to avoid paying all the taxes to the local community where their employees live. You go look at the big industries around in this state, and you look around the big industries and you will see the slums in this state. There's exceptions to that, yes. Yet they pay high federal taxes, high federal income taxes, but yet, because they're big and strong they keep it to where...the laws to where they don't pay anything in the local community where their employees live. The fact of it is they juggle their books...if they didn't juggle their books, in the locality where the industry is located, seventy-five percent or more of the tax they pay would only be what they're not paying to the federal government in federal taxes. But they juggle their books around the other way. Now, this is not putting any tax...this particular provision deleting this part of this section...is not putting any tax on big industry, but it is making it possible. If we don't delete this, it will be impossible unless you have a statewide vote...a statewide vote, and that's what this constitution is trying and should be doing is deleting provisions to where you'd have to have a statewide vote for some little something that involved a local community in a local situation. The big industry, some of you home rule people want to protect this big industry. They don't want the big industry to pay their part of their community taxes. The big busses, the big trucks, you just name it...not only...they provide employment but yet as many burdens, and they should be paying their fair share. Most of the time the taxes that they are paying is money that they are paying in Washington in federal taxes. This is not putting any tax on them. It's just taking out the prohibition. So this is a good amendment, and just like it was mentioned earlier, you will get to the real issue whether they are taxed or not or permitted to be taxed in Revenue and Tax Committee. So let's delete this particular provision. There will be opportunity to clear up the slums around your big industry in this state, and if they're really for better working conditions of their employees, they will be willing to pay taxes. But this amendment does not tax them.

Questions

Mr. Weiss Delegate Wall, this is the only home rule parish in the State of Louisiana, isn't it, that we're speaking of, East Baton Rouge?

Mr. Wall No, I don't believe it is, but...

Mr. Weiss What is the other one?

Mr. Wall But that's not relevant. What is your question?

Mr. Weiss But it is. I think it's important because...I think it is because it would be discriminating against the industries in East Baton Rouge Parish. Don't you think?

Mr. Wall No, it wouldn't.

Mr. Weiss Why not do it to all the industries such as Orleans Parish and other areas.

Mr. Wall Dr. Weiss, this is just where they incorporate a village. So this is not discriminating against anyone. This is just a general law that's providing for the incorporation of a village, so it's not discriminating against anyone.

Mr. Weiss As a legislator, aren't you aware that this is the only home rule parish in the State of Louisiana?

Mr. Wall Well, that's not correct...

Further Discussion

Mr. Slay Mr. Chairman, delegates, for those of you who might not know what we're talking about when you speak about an industrial exemption, I want to tell you just what this amendment means. Big industries have what's known as a ten-year exemption. We're not speaking about a ten-year exemption in this amendment. They also have the right to go to the police jury and ask the police jury to create an industrial park. That industrial park will give take in the properties that they own. It might be five acres, ten acres, or a hundred acres but it takes in only the property that that industry owns. Then they are exempt from special taxes that are levied by the police jury. These can be water districts, where they furnish their own water, or garbage districts and matters such as that. Now, the big industry, as you will recall, has a ten-year exemption. It would still be in effect; then this industrial exemption they are speaking about comes on top of that, gives them an additional exemption. Now we're saying in this proposal here that these people cannot be taken into the city limits of a town. Suppose you have an industry there, and suppose you take it to Scotlandville, because we've talked about them so much, and I don't know anything about Scotlandville...but suppose there's a big industry located exactly in the middle of Scotlandville. We incorporate everything else, but we're saying that this industry can never be taken into the city and help pay their just share of the cost of running that city. Once they're incorporated there's a seven mill general alimony tax that can be levied which goes to pay for police protection, for fire protection, for the cost of running City Hall, the major's salary, and all these things. All this amendment that Mr. Thompson has just talked to you about says is that this industry can be taken in and be incorporated with the rest of the properties there and they will pay their just shares of the taxes of the incorporated area. They will still enjoy the exemptions afforded them by the police jury in an industrial park. The law further calls for the assessor when he looks at the name of that company, if it's Dresser Industries, they have an industrial exemption. If it's stamped across there, industrial exemption. They're exempt from certain parish taxes, but we are now saying that they can be brought into that incorporated area, and they will pay their just share of the city taxes. That's all that this amendment says. I urge the adoption of this amendment.

Questions

Mr. Lanier Mr. Slay, as this thing would be written if your amendment were to pass, would that mean that in a home rule parish, say, like Jefferson where they had a major industry like Avondale, that four or five hundred people could get together and incorporate around Avondale and start taxing Avondale?

Mr. Slay If the majority of the people in an area wants to incorporate, that would take in that industry too. Let me say this, if an industry wants to settle in Jefferson Parish, or Rapides, or Scotlandville or wherever they want to settle, they should be willing to pay their just share of the load.

Mr. Goldman Mr. Slay, just to allow Dr. Weiss's query and all this talk about East Baton Rouge and

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up in your area, up there near Alexandria where and quite a population around there. If that particular population voted to incorporate and that plant is right there in the center of them, they would be then included with your amendment. Right?

Mr. Slay They could be included in the incorporated

Mr. Goldman So it doesn't just bespeak itself for East Baton Rouge Parish. It bespeaks itself for the entire state. Right?

Mr. Slay That's right. You named P & G and P & G enjoys a ten-year exemption and it also enjoys an industrial exemption. It would not affect that whatsoever.

Miss Perkins Mr. Slay, you must forgive my ignorance but I understand the industrial exemption that you explained, but you said that industry could be taxed. You didn't say "shall be taxed." So if they can be taxed, who determines whether they are going to be taxed or not? Legislature or local government or who?

Mr. Slay I'm sorry. I misstated wrong. They would be taxed if they are brought into the incorporated area just like I would be taxed. You must remember if this area is incorporated, these citizens will not enjoy a homestead exemption. They would be taxed, Miss Perkins.

ordered. Amendment adopted: 51-41.

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Wednesday, September 26, 1973

ROLL CALL

[96 delegates present and a quorum.]

PRAYER

Mr. Denney Lord our God, and God of our Fathers, we give Thee this moment of reverence and acknowledgement of Thy constant blessing. We ask for strength of minds and know Thy will, and the courage to carry that wisely and bravely. Guide us in our efforts and deliberations to serve this our state and its people. Give us wisdom to accomplish our tasks and may the work of our hands find favor in Thy sight. Establish Thou the work of our hands for good and to the glory of Thy name. May I wish each and every one of you in the ancient Hebrew words "Leshanah Tovah" which means Happy New Year, which is tomorrow. Thank you.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

RECONSIDERATION

[I Journal 526]

Mr. Poynter On yesterday, Section 9 of Committee Proposal No. 17, introduced by Delegate Perez, on behalf of the Committee on Local and Parochial Government failed to pass. Said Section 9 providing with powers of other local governmental subdivisions. The question is whether the convention wishes to reconsider the vote by which that section failed to pass on yesterday.

[Motion to reconsider adopted: 72-25.]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17, introduced by Delegate Perez, who's Chairman on behalf of the Committee on Local and Parochial Government and other delegates, members of that committee.

A proposal making general provisions for local and parochial government, levee districts, and ports financing thereof and necessary provisions with respect thereto. A status of the proposal at this date is the convention has adopted as amended, Sections 1, 3, 5, 6, 7, and 8 of the proposal has voted to delete Sections 2, 4 and 10 and, of course, Section 9 which failed to pass on yesterday, has just been reconsidered and is now open for subsequent action at whatever time by this convention.

[Motion to reconsider Section 9 adopted without objection.]

Reading of the Section as Amended

Mr. Poynter As presently amended the section reads as follows:

"Section 9. (A). (--it's, of course, on page 5 of your proposal--) Subject to and not inconsistent with any provision of this constitution (--that amendment being added by Delegate Gravel's amendment --) any other local governmental subdivision may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs not denied to it by its charter, or by general law, --striking out "by this constitution" and strike-putting a period "." after "general law", deleting everything through line 28.

(B) Was not amended, still reads as printed:

(B) Any local governmental subdivision may exercise any power or perform any function concurrently with the state pertaining to its government and affairs to the extent that the legislature by general law does not specifically limit the concurrent exercise of any such power or performance of any such function or specifically declare the state's exercise of any such power or performance of

any such function to be exclusive except as provided in this Article."

(C) has been amended as follows:

"(C) Nothing contained in this Section shall be construed to affect the powers and functions of a parish or city school board and the office of sheriff"--insert--"district attorney, clerk of a district court, coroner, or assessor."

Amendment

Mr. Poynter Amendment No. 1. On page 5, delete lines 16 through 28, both inclusive in their entirety, and delete all floor amendments thereto and insert in lieu thereof the following:

"Section 9. (A). Subject to and not inconsistent with any provision of this constitution, the governing authority of any other local governmental subdivision may exercise any power and perform any function necessary, requisite, or proper for the management of the affairs of the local governmental subdivision not denied by its charter, or by general law, provided that a majority of the electors in the affected local governmental subdivision who vote in an election held for that purpose vote in favor of the proposition that such governing authority may exercise such general powers. In the absence of such a favorable vote, such local governmental subdivision shall have such powers as shall be authorized by this constitution or by law."

Explanation

Mr. Conroy After yesterday's debate and discussion, it became apparent that there was a sharp division within the convention as to how this section should be approached. It also appeared to be an area that was subject to compromise and adjustment of the differences and viewpoint. This amendment is designed to accommodate those differences and to strike what I think is an appropriate and desirable middle ground. What the amendment says, in effect, is that any local governmental subdivision--whether it has a home rule charter--even if it doesn't have a home rule charter, can elect to have the residual powers that we had talked about if that question is submitted to the voters and the voters decide they want their local governing authority to have those powers. All other entities, if they haven't submitted this to the vote of the people and haven't received such a favorable vote, would have only those that are authorized...only those powers which are authorized by this constitution or by law. This takes care of what, I think, was the principal objection that was voiced yesterday, that is, the objection that the constitution or section as proposed, would have forced on certain people a form of government with additional authorities that they had never voted in favor of. This meets that objection--which I said was the primary objection--also clarifies some of the language in the prior... in the committee proposal.

I'll yield to any questions.

Questions

Mr. Denney Mr. Conroy, in your last sentence of the amendment you use the language "as shall be authorized." Would that not imply that future authorization is necessary? I take it...

Mr. Conroy I don't think so.

Mr. Denney You don't think it should read, "such powers as authorized" rather than "as shall be authorized" or "as are authorized."

Mr. Conroy Well, frankly, Mr. Denney, I don't see the difference in the phrases. I think that certainly the meaning is the same to me both ways.

Mr. Jenkins Mr. Conroy, I think your amendment is certainly superior to what we have. My only problem is that you retain Section (B) in Section 9; you haven't taken that out.

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the subject of a separate amendment or discussion. This doesn't preclude the possibility of somebody following with an amendment to delete Section (B). This is just to straighten out the situation with (A).

Mr. Jenkins But, unless we delete Section (B)... if we keep Section (B) really, isn't the effect of Subsection (A) somewhat minimal because under Section (B) "Any local governmental subdivision may exercise any power or perform any function which is not denied to it?"

Mr. Conroy I don't read (B) that way, Mr. Jenkins.

Mr. Fulco Mr. Conroy, you have provided for a majority of the electors in the affected local governmental area. You say "in the absence of such a favorable vote, such governmental subdivisions shall have such powers as shall be authorized by the constitution or by law." Is that making the election unnecessary?

Mr. Conroy Well, it delineates the difference between having the election and not having the election. If you don't have the election, all you have are delegated powers to the police jury or municipality, whatever it is. The powers that have been delegated by this constitution or by statute, those are the only authorities that such a governmental unit would have. If they want more powers, they have to submit that question to the people and they can then get the residual powers which were the subject of so much discussion yesterday.

Mr. Champagne My question was somewhat like Mr. Jenkins' question, in that you did not delete Section (B) and, of course, I get the assumption I can read, but even when I read these it doesn't tell me anything, that except what it does to me worries me. So, possibly the answer would be to vote for (A) and then attack these. Is that what you are suggesting?

Mr. Conroy Yes, I think that would be a separate issue, yes, Mr. Champagne. I think you and I should discuss that.

Mr. De Blieux Mr. Conroy, Mr. Fulco kind of touched on what I have a question about, that's in this last sentence. Now, is it...there's two possibilities as I see in this sentence—one is that the local government could come to the state legislature before they want to exercise a certain power and ask for that authority. Is that the purpose of this sentence?

Mr. Conroy Mr. De Blieux, I think the best way for me to explain the purpose of the last sentence is to say that when I originally prepared the draft of this amendment, I left off the second sentence. I didn't think the second sentence was necessary because it is a statement of what the present situation is in this state with regard to police juries and other governmental units not operating under home rule charter. It is intended simply to be a statement that the existing situation with regard to those governmental subdivisions would stay in effect, that's what it's intended to say.

Mr. De Blieux Well, now you see that's one interpretation. I also think that there's another interpretation that could be, too, with reference to this particular section; that if you had a vote in the local subdivision that they will come and give that power to their local governing body that the local governing body could come to the legislature and ask for that authority in spite of the fact that they have already given that authority to the local governing body. Is that what you are suggesting?

Mr. Conroy I think that would be the case, Mr. De Blieux.

Mr. De Blieux I think it's going to...but at the same time, I would rather think that this would be a much better amendment if that last sentence was left out.

Mr. Conroy Is that the first draft was so prepared, but some people felt uncomfortable without it and I had a strong objection to adding the last sentence.

Further Discussion

Mr. Smith Mr. Chairman, fellow delegates, I don't bother the convention much by coming up here, but I'm deeply interested in this particular matter on account of local government. I think I'm familiar with local government, and I'm greatly in favor of this amendment, as I'm a coauthor. I have served in local government as town attorney for almost forty years in a small town. I don't know a whole lot about big cities, but I feel like I'm familiar with local government and home rule. I think this is certainly home rule. By voting for this amendment, you are allowing the people in the towns to vote for this amendment. I'm going to vote for this...change if they want one, and that's what I objected to yesterday. I voted against the amendment of Mr. Conroy. Also, I'm familiar with the legislature. I served four terms and we have had small towns and large towns to come down with hat in hand and ask the legislature for favors and sometimes it went over and sometimes it didn't. I don't think they should have to do that. I think they should resolve their own problems at home. I think that's all this amendment does. So if you truly believe in home rule as you say you do, I think that you will go along with this amendment and let the towns handle their own affairs. I thank you.

Further Discussion

Mr. Bollinger Mr. Chairman, fellow delegates, we have adopted Section 8 which is supposed to be one of the good parts of this article but when you look at what Section 9 says, it only gives home rule powers to four parishes in this state. The other sixty parishes, without Section 9, have to adopt a home rule charter to get home rule, in my opinion yesterday a big objection to Section 9 was that the people did not have a choice whether they wanted home rule or not. All we are asking for today, is to give the people the option, give the people the choice, give the people the power to decide if they want their local government to have the power to pass local laws and local ordinances which affect the management of that local government—sixty parishes in this state will have that option if they so desire; if not, if they choose not to have local home rule, it's very simple, they reject...reject it in an election, it'll go back under Dillon's rule as it presently is and which apparently there's not...too much objection to the way it's operated with the opponents of Section 9. They agree that Dillon's rule is working satisfactorily while if the people want to have local home rule, they can have it. I think that's a very good thing to have given the people a choice. I thank you.

Further Discussion

Mr. De Blieux Mr. Chairman, fellow delegates, I think on this...whether they wanted this type of government. Now, I notice in explaining it you have in the last sentence "in the absence of such favorable vote..."

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that is they didn't get a favorable vote by the people they could still have this type of government whether the people wanted it or not.

Mr. Bollinger No, Ma'am, if it did not get a favorable vote of the people then they would operate in the same manner in which they operate today. The only reason for this last sentence was that we thought that if it wasn't provided for, that all the powers presently had by the local government, that is, police juries and other forms of local government not provided under home rule charters, they would lose the powers they have now.

Mrs. Warren But, this "or by law" seems to have been explained up there that they could go to the legislature and then override what the people wanted. Now this is what I'm trying to find out.

Mr. Bollinger Right now, they have to go to the legislature to get a special authorization to have jurisdiction. This would just say that...

Mrs. Warren This is what I'm saying, after the people have voted that they did not want it--I means the people did not want it, and then the governing authorities could go to the legislature and have the legislature to override what the people wanted. Is this what it would mean?

Mr. Bollinger I think you misunderstand me, Mrs. Warren...

Mrs. Warren That's what I'm trying to understand now.

Mr. Bollinger The gist of Section 9 says that people will vote if they want their local government to have the broad grant of authority and then the last sentence says if they don't want the broad grant that the local government can still go to the legislature and get special laws adopted to allow them to have specific authority--not broad...not cover everything. Does that answer your question?

Mrs. Warren I hope so. I'll hear somebody else and maybe I...

Mr. Henry You've exceeded your time there, Mr. Bollinger.

Further Discussion

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, I believe that this is a good compromise from the committee proposal because it does require the submission to the people if these police juries want to exercise this additional authority. Therefore, we have no objection and approve the amendment and if there are no other speakers, I move the previous question.

[Coauthors added. Previous question ordered.]

Closing

Mr. Conroy I really came back here only in the event there were any questions in light of the debate that had been offered. The committee has said they have no objection to this. I think it does represent a desirable compromise; it does put the issue in the hands of the people where, as I had argued yesterday, it belongs. I urge you to adopt the amendment.

Questions

Mr. Burson Mr. Conroy, to inform those delegates who are...have some concern about Paragraph (B) of this section, it's true, is it not, that we are presently attempting to arrive at some language that will assuage the doubts that the people have with regard to Paragraph (B)?

Mr. Conroy Yes, but I think that before (B) can

be tackled we have to know what (A)'s going to say, and I hope that the amendment would pass so that then (B) could be properly adjusted.

Mr. Flory Mr. Conroy, isn't it true though that you haven't really corrected the problem, or at least erased the objections until you do solve the issue in (B) as it relates to the powers granted in (A)?

Mr. Conroy Mr. Flory, I think that depends on a reading of Section (B). I read the last phrase in Section (B) to limit everything that preceded the last phrase, so that if (A) is passed the way I have and my coauthors have recommended, I think that (B) would be alright. But, I think it's unclear, and I think it should be clarified so that it is put in accord with it. But that last phrase that says "to the extent permitted by this article" and so forth, I think limits all of the preceding language in (B). But, I think it's unclear and I think it's desirable to straighten it out.

Mr. Flory Isn't that particularly true in light of the language of your amendment as "being inconsistent with other provisions of the constitution or general law"? Doesn't that mandate that you have to clean up (B)?

Mr. Conroy Virtually, yes.

[Amendment adopted: 105-3. Motion reconsider tabled.]

Personal Privilege

Mr. Rayburn Mr. Chairman and fellow delegates, several of us have been real concerned for the last few hours about the welfare of our Chairman. We had a little get together this morning and realizing that he's had a strenuous load for the last several months placed upon his shoulders, knowing that he has handled it well and capably and, with a sincere hope that he could continue to carry on in the future like he's carried on in the past, we decided that we needed to offer him a little assistance. We tried to find a doctor and someone said they were a doctor, and we asked him to prepare a prescription. I cannot make the doctor's name out, but I do see right under it it says DVM. This prescription is to our Chairman, Mr. Henry; this is a container that contains a considerable amount of thought pills. It says here "Please take two before going to the mansion at least one hour before you plan to be there." At this time, Mr. Chairman, I would like to present you with this little token and let you know that your friends are deeply concerned about you. I hope this little bottle of pills will help you in the future.

Mr. Henry Is that to help me think or to remember to think, Senator?

Proceed, Mr. Clerk, with the next amendment.

Amendment

Mr. Poynter Amendments, there are several sets of De Blieux amendments, this set reads as follows:

Amendment No. 1. On page 5, delete lines 29 through 32, both inclusive, in their entirety and on page 6, delete lines 1 through 4, both inclusive, in their entirety.

Explanation

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, we have already taken care of, you might say, what is contained in (B) by the amendment that we previously adopted, the Conroy amendment, and therefore, I don't think there's any necessity for Paragraph (B), and this amendment just eliminates that particular paragraph, which I believe the Local and Parochial Committee has agreed to, and I ask your favorable vote on it.

Mr. Perez We have no objection to the adoption of the amendment.

Amendment No. 1, proposed by Delegate Conroy and others, and adopted by the convention on September 26, 1973, on line 12, immediately after the words "absence of" and before the punctuation and word "such" delete the words "such a favorable vote" and insert in lieu thereof the words "an election".

Explanation

Mr. De Blieux Ladies and gentlemen, let me explain what I mean by this amendment. As I read the last sentence of the Conroy amendment, it says after you have had an election, and you get an unfavorable vote, that you can come to the legislature and get them to overturn the people's vote on that, and therefore do something which the people have voted against. I don't think that's what the amendment really meant. I think that they meant that you could get an election...I mean get the vote of the legislature to do something, by coming to them without having an election, and I just wanted to change it so that you could do that. You could come to the legislature and get something done without the necessity of holding an election, and I want it to state that. Now, if you mean that you want to overturn the people's viewpoint and leave it like it is, I think that's absolutely wrong, and as long as I'm a member of the legislature, I'm not going to vote to give the authority to local government to do something which those people have turned down, even though I might disagree with them, and I don't think you would either. Now, let's change it and clean it up. Really, I don't think you need that last sentence. Let's be honest and frank with you, because it really doesn't mean anything. If you eliminate the sentence, you could come to the legislature with or without this, but let's don't stick something like this in the constitution and tell the people that, after you've voted it down, we're going to get the legislature to overturn your vote, and that's what this amendment means.

Mr. Lerner Senator De Blieux, is it not true that the way your amendment is drafted, that if there was an election, and the people refused to grant the residual grant, that the unit would then have no constitutionally based power?

Mr. De Blieux If they refused to grant it? That may be true, but you could get an act of the legislature. But what I'm trying to say is, don't go and hold the election and let the people turn it down, and then come to the legislature to do it. Why not go to the legislature, if you wanted to avoid the necessity and expense of an election, go to the legislature and get your authority to start with.

Mr. Lerner But, wouldn't it be true that during the period of time between when the election was held and the time that you come back to the legislature, that that local unit would have no powers whatsoever?

Mr. De Blieux It might not have power to do the very thing which the people have turned down, but do you want to go against the wishes of the people in the local government unit and do something which they have turned down?

Mr. Chairman.

tion does not have a favorable vote, with the... if you adopted the De Blieux amendment, then it would mean that the legislature could not give local government authority to do something which the people have turned down. The last sentence was to make it clear that until and unless there is an election with a favorable vote, that the police continue to operate under the same conditions that they operate now, that is, with specific designated authority. I therefore urge you to reject the amendment, and I call the previous question.

Questions

Mr. Lerner need those last words or that last sentence? It already provided; you don't need it.

Mr. Perez To make it perfectly clear because of what you have...the words that went before, in which you call for...you provide for the method for election, there may have been some doubt as to what position the police juries would be in until such time as they have that election, and to make it abundantly clear that it could not be interpreted otherwise that they still retain the powers which they presently have until such time as an election is called in that local governmental subdivision and they are given this additional authority.

Mr. Fulco All right. Whether it is or not, it's still provided for in the existing charter. They are protected under the '21 Charter, and until this is put into effect, the new constitution, they will have been protected just the same.

Mr. Perez No, sir. We're writing a new constitution now. The old constitution would be wiped out.

Closing

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, I don't want to take too much of your time, but the whole thing this is about is whether or not you are going to tell the legislature that they have the right to do it.

They have the right to do it. I want you to put this language in the constitution. Therefore, I say that you should put this into the language of this constitution and tell the people...that is, to you...come to the legislature and let them know that ordinarily would not be...tell the people that just because you...something, the legislature's going to tell and do otherwise for you. I just don't want to be bought to put that type of language in the constitution. I ask your vote.

Questions

Mr. Lerner need those last words or that last sentence? It already provided; you don't need it.

Mr. Perez To make it perfectly clear because of what you have...the words that went before, in which you call for...you provide for the method for election, there may have been some doubt as to what position the police juries would be in until such time as they have that election, and to make it abundantly clear that it could not be interpreted otherwise that they still retain the powers which they presently have until such time as an election is called in that local governmental subdivision and they are given this additional authority.

Mr. Fulco All right. Whether it is or not, it's still provided for in the existing charter. They are protected under the '21 Charter, and until this is put into effect, the new constitution, they will have been protected just the same.

Mr. Perez No, sir. We're writing a new constitution now. The old constitution would be wiped out.

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Conroy's sentence it says that after you've had an election and the people have turned it down, you can come to the legislature and get the legislature to change it. My amendment just says that without an election you can get the legislature to grant the authority.

Mr. Anzalone Well, Senator, that's what we've been fighting on the floor of this convention for the past five days, and we haven't been able to convince you of it yet.

Mrs. Zervigon Senator, you've served in the legislature a long time. Is it the habit of that body to override the will of the people as expressed in local elections?

Mr. De Blieux I think you would have an awful hard time getting them to do that, Mrs. Zervigon, and for that particular reason, I don't see why we should tell the people that we are going to do it.

[Amendment adopted by 20-14. Motion for reconsideration tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Bollinger], on page 5, between lines 16 and 28, within Floor Amendment No. 1 introduced by Messrs. Conroy, and others, and adopted by the convention on September 26, 1973, on line 13 of said Floor Amendment, immediately after the words "powers as" and before the word "authorized" strike out the words "shall be".

Explanation

Mr. Bollinger Mr. Chairman, fellow delegates, this, I think, is actually a technical amendment. Mr. Denberry brought out the point, when Mr. Conroy was explaining the amendment to say change Section (A)...Paragraph (A) of Section 9, that the words "shall be" in the last sentence of the amendment could be construed to only refer to future and not present or past legislation, and I think this makes it eminently clear that it refers to any law by the constitution and by law. So, I move the adoption of the technical amendment.

Further Discussion

Mr. Perez No objection; I consider it a technical amendment.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Perez], on page 6, at the beginning of line 5, strike out the punctuation "(C)" and insert in lieu thereof "(B)".

Explanation

Mr. Perez This is just to correct the letter in the next paragraph because we delineated (B); we would now make (C), (B).

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis and Mr. Perez], on page 6, between lines 8 and 9, insert the following:--and Judge Dennis, we need to make that Paragraph (C) now--"(C) Notwithstanding any provision of this Article to the contrary, the courts and their officers may be established or affected only as provided in Article V of this constitution."

Explanation

Mr. Dennis Mr. Chairman and Fellow delegates, this

is the same amendment that was added to Section, the previous section, Section 8 to make it clear that we are not here authorizing any new court system, that the courts will be governed,...the establishment and modification of courts will be governed by the provisions of the Judiciary Article.

Questions

Mr. Denberry Judge Dennis, you use the word "article" here, and you used the word "article" in the previous amendment. The word "article" comprehends the entire article. Do we need this in each section?

Mr. Dennis Yes, sir. I thought about that. I think we do, because the fact that we added it in one section and didn't put it here may by implication cause someone to interpret it to mean that we were...intended to authorize a new court system.

Mr. Denberry Well, don't you think, then, it technically should be "section" in each one of those amendments?

Mr. Dennis Yes, sir, technically, I think so. Technically, I hope that it can be changed stylistically so that we can only say it one time perhaps, somewhere.

Mr. Bollinger Judge Dennis, to accomplish the same thing, wouldn't it be easier to make a section saying that "notwithstanding any provision of this article to the contrary," which would cover all of them, rather than trying to tack it on to each section? You'd only have one time you'd have this verbiage instead of having it two or three or four times?

Mr. Dennis I think you may be correct, Mr. Bollinger, but since we don't know how many sections we're going to add, what we are going to be in this article, I think we have to take them as they come. I wouldn't object to any stylistic changes in the future.

Mr. Jenkins Judge Dennis, my problem is that I fear that by enumerating this one thing that can't be done by this article, that we're by implication saying that perhaps other things can be. Now, we already have in this section that in (A) that "subject to and not inconsistent with any provision of this constitution," and, obviously, all of these things are subject to all of the other provisions of this constitution. Aren't we making a mistake by enumerating this particular one, and not say, the Bill of Rights Provision or any other thing?

Mr. Dennis No, sir, I don't think so, as I explained on the previous section when I offered this same exact amendment. The Judiciary Article says, "the judicial powers shall be vested in the Supreme Court, court of appeal, district courts and such other courts as authorized by this constitution." Now, we are here authorizing governmental powers, and we're not restricting them in any way so that you could conceivably set up a separate court system under this section for local government, inconsistent with that envisioned in the Judiciary Article. This is the same amendment that we adopted on home rule charters. I believe you have already... I was not here yesterday...you adopted one that made it clear that local government provisions should not affect sheriffs and other offices. I think that we should do the same thing for the courts, just like we did under the home rule charter section.

Further Discussion

Mr. Perez I have no objection to the adoption of the amendment, except that I would hope in Style and Drafting we could make it clear that it applies either to the section or that we will have this recitation one time instead of having to have it repeated.

Mr. Armstrong: That is exactly right. It did not, well, the first article was really written

Closing

Section passed: 110-7. Motion to adjourn the meeting. In accordance with the By-Laws, the meeting adjourned at 10:00 a.m.

Mr. Poynter Section II has been previously read,
therefore, nothing is said Mr. Chairman I
think will be understood with relation to paragraph
802. We have it, there are other bills, the same

tinuing through 24 and 25, was stricken on yesterday, 26, 1967. The patient died at the hospital at the juncture.

Mr. Poynter Amendments sent up by delegates Jen-
kins, De Blieux and Kean.

Amendment No. 1, on page 6, line 23, after the partial word and punctuation "rated," add the following: "No municipality incorporated under this Section shall include property previously included in an industrial area or district".

Explanation

Mr. Chairman, delegates, this essentially attempts to restore the concept.

Mr. Henry Wait just a minute, Mr. Jenkins.
Why do you rise, Mr. Kean?

Mr. Kean Mr. Chairman, I want to apologize to the delegates, but I'm sure Mr. Jenkins misunderstood me when he asked me whether I wanted to be on this amendment. My name appears on here, but I did not intend for it to.

Mr. Henry Scratch Kean on the amendment.

Explanation continued

Mr. Jenkins Mr. Chairman, delegates, this amendment attempts to restore the language, not the same language, but the same concept which is found in lines 23, 24, and 25 of the committee proposal. Yesterday amendment was offered, and I don't believe that there was any opposition expressed to it at that time.

Point of Order

Mrs. Warren Mr. Chairman, just a few days ago, I had a amendment. I accepted the floor ruling. It was reworded. It was designed to do the same thing that I had originally wanted to. The convention ruled that it was out of order. Mr. Jenkins has said his amendment is designed to do the same thing. I think he's out of order.

Ruling of the Chair

Mr. Henry All right. Mrs. Warren, the other day I think we let the convention decide whether or not they thought your amendment was or was not in order, and the Chair not being certain in this instance, we'll let the delegates determine whether or not they believe that the amendment was in order.

Amplification delayed in vitro

[illegible]

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East Baton Rouge Parish could be included in the proposed incorporation which would extend as far south as almost to this State Capitol because virtually all of our industrial area, Gulf States Utilities, Exxon Company, Exxon Chemical, right on up, is not in the city limits, and it's in an industrial area for the most part. But it would be possible, because there is no population in that area, for the Scotlandville and for this additional beginning at Scotlandville and for this additional area, all the way down almost to the State Capitol, to be also included, and there would be no one in that area to object or refuse to sign a petition or vote against it if it came to a vote, or whatever. The important point here is that the industrial manufacturers and other people have located in these areas have done so with the understanding that they would not be subject to inclusion in a municipality. The East Baton Rouge city-parish charter includes just such a prohibition. It forbids the inclusion of an industrial area in the municipality. Now, if we are going to keep faith with the industries that have located here, we have to continue that concept. The committee proposal, as originally introduced, did include that concept. It said that we're going to allow areas like Scotlandville and home rule charter parishes to continue in existence or to be able to be incorporated, but we're not going to allow industrial areas to be included in these incorporations. So, this amendment simply puts back that concept. The fact is that these industrial areas provide their own city services. So, really, they gain no benefit and have no desire to be included in a municipality and pay the additional taxes and come under the additional regulations that they are required to. Now, if there's anything that we need more of in this state, it's more investment, more industrial development, and thus more employment for our people, and I certainly wouldn't want us to do anything that would discourage future investment or cause a breach of faith with those that have invested here in the past, so I urge the adoption of this amendment.

Questions

Mr. Willis Mr. Jenkins, we have looked only at one side of the coin, I think, in this argument. Now, visualize this—an industrial area of about fifty acres that will be an unincorporated settlement—it takes forty people around that area and it names the town "Esso." Can it do that and shield itself from taxes? Can it do that; what's to prevent it if your amendment is not adopted?

Mr. Jenkins Well, it would take, I think, two hundred and fifty people, normally, I believe that's the requirement now.

Mr. Willis Normally...it doesn't say that. The constitution adumbrates any law enacted under it, and if that thing says "unincorporated settlement," that can mean a settlement of five or ten people. There is no limit to no limit. Isn't that correct?

Mr. Jenkins Well, you may be right. We need to put some number in here.

Mr. Willis Well, sure. A factory on ten or fifteen acres can, in order to protect and shield itself, surround an area around it, and then they'll call it "Willisville" if you want. Isn't that correct? That's the other side of the coin.

Mr. Jenkins Yes, sir. So I think that's one reason we need the amendment.

Mr. Willis Precisely.

Mr. Roy Woody, this amendment does change or does modify the original committee proposal in that it deals with previously included industrial areas, right?

Mr. Jenkins That's correct. It has to be previous¹⁷ included.

Mr. Roy Which means that if in the future, if the legislature, since we wouldn't be dealing with it at all except in previously included areas, then future areas could be dealt with by the legislature and we would not be breaking faith with any particular area, industrial area, that has already come in and set up according to what is thought we would agree to. Is that right?

Mr. Jenkins I believe that's correct.

Mr. Rachal Mr. Jenkins, I don't know if I'm looking at these right. Could you tell me how your amendment improves or changes what is in the article?

Mr. Jenkins It changes in that, you'll remember yesterday we deleted lines 23, 24, 25, this restores that concept—not the same language because the language is different—but it restores that concept, thus, it gives some protection to our preexisting obligations that we had with regard to industries that have located in industrial areas or industrial districts.

Mr. Arnette Woody, I voted so that you could present your amendment because I wanted a couple of questions answered. I'm a little confused because I don't know what an industrial area or district is, because we don't have any, I don't think, in my area. Is it a legal determination or an ordinance passed, or what is it?

Mr. Jenkins As I understand it, we are talking about a legal special district, in effect, which has been created pursuant to the constitutional laws of the state.

Mr. Arnette Well, in other words, if there has not been a district set up for a particular industry, or something like this, then they could incorporate that industry in a town?

Mr. Jenkins Well normally, they could incorporate anything which would be contiguous within certain defined limitations that the courts have laid down. Now, if it's not contiguous and things like that, it couldn't; but, no, we don't have any other protection for it, I don't think. Perhaps we need some.

Mr. Arnette The reason I was wondering, Woody, because in some sections of the state they have say an oil refinery, or something like this that's kind of out in the country, and they've got a few little houses around it like that, but they don't have an industrial district. They could take in that oil refinery in their little village if they wanted to, is that correct?

Mr. Jenkins Well, this wouldn't grant anymore authority than they have now to do that, Greg. They already have that authority if they meet certain statutory requirements. This doesn't change that at all except in home rule parishes; it really puts home rule parishes on par with all of the other parishes.

Mr. Alexander Delegate Jenkins, under the terms of this amendment, do you mean that an industrial installation may be immune from the regular rules, regulations of a municipality that may be created under this section?

Mr. Jenkins Only to the extent that they are authorized to be immune, for example under Section 21 of the committee's proposal, the legislature is given the authority to authorize parishes to create industrial areas. Now, if we're going to attract industry into the state, you see, we must, we've, at least we have in the past, offered them certain guarantees. One of which is that they won't have to be included in municipalities such as this. We're simply trying to preserve that same protection such as what we've had in East Baton Rouge Parish.

Mr. J. Jackson Mr. Jenkins, under the state stat-

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you addressed yourself yesterday to fire protection, and certainly I'm sure that there are times that the fire department answers calls inside of industrial plants. In West Baton Rouge I've seen the East Baton Rouge fire truck over in my area, and I'm thankful for that. I've seen the West Baton Rouge fire truck going to East Baton Rouge, and vice versa in many parishes. Now, we can't address ourselves to that. I think that ninety percent of the time industry takes care of their own fire fighting. If there is a large fire, I think that all of the fire trucks around will answer, and I agree that they should. The only thing I can say to you is—just listen to me now—industry is paying their fair share of taxes in the ad valorem area. They're paying every bit of the taxes that are assessed on a parishwide basis, and as far as I know in East Baton Rouge for instance, there are eleven mills to run the school board, there's another eleven mills for maintenance and operation of the school board, five mills for building for capital improvement, there's thirteen mills for debt retirement. Now, this is just a school tax. Now, industry in this area is paying their millage if it's on a parishwide basis, and I defy anyone to say that industry is not picking up their fair share of ad valorem taxes on a parishwide basis. I see no reasons why they should pick up ad valorem taxes in a municipality when they get no benefits from that municipal government.

Questions

Mr. Slay Mr. Lowe, I believe we're confusing a little bit, parishwide taxes and municipal taxes in your statement, haven't we? Would you say then that industry should not pay municipal taxes and that they don't get any benefits for running their trucks up and down the streets of that town, and their employees using the library? Is that what you're trying to tell us?

Mr. Lowe Well, Mr. Slay, I doubt seriously if they get anymore benefits for running their trucks up and down the street than does the East Baton Rouge truck that would go to another parish. If we're talking about a West Baton Rouge industry we don't try to assess the trucks that come from outside the parish that run on those streets. It just doesn't make sense to try to put a tax at the incident of that particular occurrence.

Mr. Slay We're not speaking about a tax on the truck, we're speaking about supporting the municipality. Go ahead.

Mr. Lowe We're talking about using the streets, and I think that...

Further Discussion

Mr. DeBlieux Mr. Chairman and ladies and gentlemen, I would like to reason with you for just a very few minutes on this particular amendment. I think that the vote that was indicated yesterday on the amendment by Mr. Hayes to reduce the requirements from two-thirds to a majority indicated that this convention was greatly in favor of the provision that areas such as Scotlandville and located in East Baton Rouge Parish, because I speak about that even though it applies to other areas, should have some relief. We, most of us here in East Baton Rouge Parish, I believe, recognize that fact. Let me tell you this, the particular section, Section 11, applies only to parishes who have home rule charter provisions. It does not apply to any other area. At the present time you have only the parishes of East Baton Rouge, Orleans, Jefferson, and I believe St. Bernard; with home rule charter. So, therefore, you are confining at this particular time this area. In addition to that, the particular amendment applies only to industrial areas previously included in home rule charter provisions. It does not apply to any area not included. Now, so, therefore, I put this to you; if we're going to have this particular section so that we can give some relief to people that

have been excluded from having proper municipal services and so forth because of being located outside of city limits such as the Scotlandville area, we must give standing to the industrial areas that have been excluded. Now, let me say this with reference to the question that was raised by Mr. Slay. The industrial areas in our parish pay the parish taxes, and they pay a pretty good hunk of parish taxes. I would say that the services as you well know of any municipality or area such as that, the great cost are for police, garbage collection, and fire protection. They maintain those services in those industrial areas and that is the reason when the home rule charter was put together they were given that exception from municipal taxes. So, therefore, it's proper that we keep our contract with them as long as they provide those services that the parish and the city of Baton Rouge will not need to provide those services for them. I don't believe we can pass this particular section without this amendment; and therefore, I ask you in all good conscience of contract, morality, and everything, let's adopt this amendment.

Questions

Mr. E.J. Landry Mr. DeBlieux, I wish the members of this convention would listen to Mr. DeBlieux's answer. I need to know this answer because I'm faced with future problems having to do with Section 11, and members of this convention, you need to know this answer, please. Mr. DeBlieux, Section 11, as it is now written, does not only apply, does it, to the parish that we are talking about? I'm moving into an area into a situation that will require your answer. Does this not apply to future parishes such as mine that will incorporate and need the substance of this paragraph? This does not only apply to Baton Rouge, is that right?

Mr. DeBlieux Mr. Landry, if the parish in which you live should adopt a home rule charter provision, and if it had industrial areas which were excluded from municipal areas then this particular provision would apply. If you had an area outside of a municipality that wanted to incorporate, and if they were adjacent to an industrial area, yes. But, at the present time it does not apply to that is the industrial area would not be included if this particular amendment is adopted under the present home rule charter.

Mr. E.J. Landry But haven't we made it sound as though it applied only to Baton Rouge? I mean, there are a lot of us who are looking forward to living under the provisions of this Section 11.

Mr. DeBlieux Well, that's what I say. For instance, it would apply to an area like the Avondale shipyards down in New Orleans, or any other area that might be in an industrial area. It could apply to Jefferson Parish, it could apply to St. Bernard Parish, it could apply to Orleans Parish, it could apply to East Baton Rouge Parish, and any other parish that would adopt a home rule charter.

Further Discussion

Mr. Roemer Mr. Chairman, and fellow delegates, I rise to oppose this amendment. I felt the amendment was out of order giving the action yesterday directly contrary to this on the same idea, that is the rights and likes of a newly incorporated area as to what area it takes in, and to the taxing province therein. Now, we've dealt with this in revenue and taxation for sometime, that is the overall problem of industrial exemptions, industrial areas and districts. I have to oppose this particular amendment for several reasons. First of all, the amendment was offered under the guise of protecting the presently existing industrial exemptions, industrial areas. Well, it does a lot more than that; read the amendment. It says "no municipality incorporated under this section shall include property previously included in an industrial area district." Property doesn't have to be in an industrial area now, just so long it was

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Mr. Henry You've exceeded your time, Mr. Roemer.

Mr. Chhabra: Mr. Chairman, delegates, I wanted to have dismissed with any need to say anything, and I believe I can sum it up for you. Everything that Pomer said in this particular case, I share the thought. This is purely and simply another example of the relentless drive and the willingness of the ETC corporation to avoid their fair share of taxes, to further gain a tax advantage for the owners, and then to sit back and "where will the money come from?" Every time you suggest something more

pay their share, where will the money come from to
run these new businesses, and who will own them?
The 1980s have been labeled as the decade of
the individual, and the 1990s as the decade of
the network. One of the trends in the 1990s is

this the Castro amendment? It's just like
they say "Yes, you can go but don't take anything
with you."

Mr. Chehardy I, also, agree with Newton on this.

provide that in certain instances
ter parishes, new
it wasn't going to
rule charter as in
that's not the purpose at all
this amendment is to keep the pu
tion and the growth of income
resord vote

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Amendment

Mr. Poynter Amendment No. 1 [Dr. Mr. Chatelain], On page 6, delete the lines 16 through 25, be inclusive in their entirety, and delete all amendments adopted thereto, and insert in lieu thereof the following:

"Section 11. Any unincorporated settlement having at least five thousand inhabitants, which is situated in a parish operating under a home rule charter or a home rule plan of government, may be incorporated when a majority of the electors of said settlement, as certified by the parish registrar of voters, sign and present to the governor a petition and meet other necessary requirements as set forth under the general laws providing for the incorporation of cities, towns, and villages. However, no such newly incorporated area shall include any property previously included in any industrial area or district."

Explanation

Mr. Chatelain Mr. Chairman and fellow delegates, for two days now we have been discussing a problem that exists in one or two parishes that have home rule. There are only three parishes, to my knowledge, that now enjoy the great privileges of home rule. One of them that has caused us many hours of agony, and many hours of problems, is East Baton Rouge Parish.

For eight months, now, we have been wrestling on the committee with this problem. There is true, in fact, a problem here in East Baton Rouge Parish. It is a problem where certain sections of people are out to themselves and have a complete... Right or wrong, I'm not here to discuss that, but there is a problem. My amendment simply does this. It requires that a minimum of five thousand people, in any one of the home rule parishes, that want to incorporate may do so, provided fifty percent of the electors in that minimum of five thousand people want to be incorporated. I think without this minimal number, you are going to have problems throughout this state. I think this will preclude a lot of little areas, little sections of this state, trying to incorporate around some industry or some area that could cause many problems. If you will read my amendment carefully, it states emphatically that only those sections, or those industries that were existing at a time of this attempted incorporation count, not the ones previously, like was stated this morning, maybe five or ten or fifteen years earlier--only at the time of incorporation.

Let me say one thing about industry. That's the reason why I feel that it's important to have this last paragraph as was recommended by the committee. The governors of this state, the present and others, have gone throughout the world searching for industry. They have wooed the industries into our state. A lot of small communities have even gone so far as to float bond issues to bring these... to build buildings for these industries to come into the various parishes of this state. I think it would be a disservice to those industries to leave the doors open where you could come in with less than five thousand people and incorporate them into an area.

I think this is a fair amendment. I think it will solve the problems that exist here in this parish and other parishes for now and the future. I urge you to support this amendment, and I feel this is a fair way to compromise this problem.

Thank you.

Questions

Mr. Roemer Mr. Chatelain, your provision in this amendment, the same one that we've discussed for a number of times now, that is, in regard to industrial areas and districts. Are you trying to have that affect only industrial areas existing at the time of the incorporation? Is that right?

Mr. Chatelain Right.

Mr. Roemer Well, it doesn't say that. It just

says "any previously so endowed land."

Mr. Chatelain Well, that was, Mr. Roemer, very well debated when Mr. Woody Jenkins' amendment was discussed this morning.

Mr. Roemer Well, what was the disposition of this convention toward that particular article when we debated it so long, Mr. Chatelain? Didn't we defeat it overwhelmingly?

Mr. Chatelain Mr. Roemer, you have one of two options available at this moment: Either vote for or against it, sir.

Mr. Duval Mr. Chatelain, I was wondering, are you familiar with the present statutes on the books which require a certain number of inhabitants?

Mr. Chatelain Yes, sir.

Mr. Duval And what do those statutes provide?

Mr. Chatelain A village can be incorporated with as minimal as one hundred and fifty souls.

Mr. Duval Is that what the present statute provides?

Mr. Chatelain That's the present statute, yes, sir--one hundred and fifty minimal.

Mr. Duval And is there any restrictions as to the amount of area required for incorporation?

Mr. Chatelain No, sir. No area. That's one of the fears that I have.

Thank you. I urge the adoption of this amendment.

Mr. Stinson Mr. Chatelain, you have used the figure, five thousand, but you don't use any area. Don't you think you are really discriminating against those that might be compactly two thousand in a much smaller area than even five thousand would be under yours?

Mr. Chatelain Well, again, Mr. Stinson, this is what we came up with... we started off with twenty thousand. We discussed the possibility of areas, but you are creating a lot of other problems. In many ways, there are many delegates who believe this don't even belong in the constitution, and what we are trying to do is make a compromise. You have an option to vote for or against it, sir.

Mr. Stinson Thank you. I'll vote against it.

[Previous question ordered. Amendment rejected: 37-57. Motion to reconsider tabled.]

Amendment

Mr. Poynter Dr. Weiss sends up amendments.

Amendment No. 1, on page 6, delete the lines 14 through 25, both inclusive in their entirety, and delete all floor amendments thereto and insert in lieu thereof the following:

"Section 11. Home Rule Parish; Incorporation of Cities, Towns and Villages; Alteration of Boundaries

"Section 11. When one-half the electors, as certified by the registrar of voters in any parish operating under a home rule charter or a home rule plan of government, sign and present to the governor a petition and meet other necessary requirements as set forth under the general laws providing for the incorporation of cities, towns, and villages, an unincorporated settlement may be incorporated, and unincorporated cities, towns and villages may alter their corporate boundaries."

Explanation

Mr. Weiss Fellow delegates. We are speaking here of one particular item, namely, home rule parishes.

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rule charter. There seems to be considerable confusion and this is only an attempt to clarify the matter so as not to create more havoc in a situation which apparently is fraught with danger.

As Delegate Heine has said, I do not think we should air out dirty linen in individual parishes, in other areas that are of no concern of a constitution. It is for that reason that I think this is a line-drawing situation and attempt to explain to all of you what a home rule parish is, versus home rule.

There are three factors in this amendment which are worthy of note. The first is the fact that this home rule parish amendment intends to have one-half of the electors, which would be the majority, to act through a charter. I request that the charter be initiated for this home rule parish or be changed. Now this is only fair. If a parish has a charter, it seems perfectly obvious that the majority of the people should vote on this. If the majority of the people favor a change, then a change would be ordered by a vote.

The second factor is that there are apparently some inequities in East Baton Rouge Parish which need adjustment: namely, that there are unincorporated areas which are not receiving their fair share, apparently. This would be, as the last portion of the floor amendment reads, "they may be incorporated, or the incorporated cities may alter their boundaries." This is a futuristic amendment. This is an amendment for those home rule parishes that want to change their form of government within reason and by a voting majority. I think this is more than a compromise, but a sensible approach.

Now I bring this up for another important reason because I have been involved in some interesting matters concerning emergency medical services. It is quite interesting that in spite of all the problems that East Baton Rouge delegates and others have related, I find that East Baton Rouge is in an enviable position by virtue of their home rule charter. Namely, they have what is known as a nine-eleven system, a telephone system, which allows anyone in this parish, East Baton Rouge, to pick up a telephone, dial 911, and obtain the services, emergency services of either police, fire or ambulance. Now the nature of these services and the quality of them I am not in a position to comment upon. But in our own Calcasieu Parish, we have tried for some time to initiate the so-called nine-eleven phone system, whereby anyone on a highway within the parish—and this again is futuristic thinking—many of you sitting here may, at a later date, find that your parish may want to inaugurate a home rule parish charter. So, it is possible, by having a home rule parish charter, that you could in the charter itself allow for ease of operation of the fire department, the police department and ambulance services within the parish.

I, therefore, suggest that this is a futuristic amendment which will coordinate the present home rule parishes of East Baton Rouge, Plaquemines and Jefferson into one section, and not discriminate or try to pick out certain comments of the State: namely, East Baton Rouge that has problems that have come to this convention to try and iron out here. I contend that this is not our problem. This is it. However, I think it should be worked out equitably.

The state creates corporations in two ways: by contract and by vote. I think it is fair one by voting of one-half of those who are with-

interferes of a parish would creation of powers. How how could you see a parish

Mr. Warren: Mr. Warren, I think the charter nature has denied it. As I pointed out to you, the legislature is the one that created and approved this corporation. It's not the parish alone. It's the legislature that they went to, and as so many legislators here have related, it's this parish that was influenced or has influenced legislators to vote this corporate charter as is now existing in the East Baton Rouge Parish, I believe, is what you refer to.

Yes, well, I think that about the same thing. The parish has gotten the legislators to go their way.

Mr. Weiss: That's right.

Mrs. Warren: All right.

Now, my second question was this: When a parish is already broken itself into four parts, why do you think they wouldn't want a fifth part?

Mr. Weiss: Well, as I say, this is a local home rule problem. And if the people of a parish want changes, I think they are entitled to it. But I think everyone in a parish, if it's a home rule parish charter, should have the power and ability to vote upon it. So, at least half of the electors should express themselves.

Mrs. Warren: Well, why are we discussing parishes and municipalities if the convention doesn't have anything to do with it?

Mr. Weiss: It does. It may be changed constitutionally, and it is this amendment that I propose as a constitutional change.

Mrs. Warren: Very hopefully it will pass, yes, you.

Mr. Weiss: Thank you.

Mr. Jenkins: Dr. Weiss, isn't it true that rather than an effort to make East Baton Rouge Parish different from the state, the purpose of this section, as written right now without your amendment, is to make East Baton Rouge the same as the rest of the state so that people in rural areas here can incorporate just as they do in other areas of the state?

Mr. Weiss: I'm not debating the section as it is written. Mr. Jenkins, only the people of the parish I'm not sure what the section means. I think this debate for several hours. There is a great confusion and so much difference of opinion that to fix East Baton Rouge Parish and its municipalities in the fashion that the power interests want it in this convention.

Mr. Jenkins: I think that it would take, under your proposal, sixty-six thousand signatures to incorporate twenty-five or thirty thousand people altogether.

Mr. Weiss: Did you know, Mr. Jenkins, that in East Baton Rouge Parish, it would take three thousand signatures to incorporate some old population. So, I think it is a constitutional, not specific local problems.

Further Discussion

Mr. J. Dr. Weiss: I think that it would take, under your proposal, sixty-six thousand signatures to incorporate twenty-five or thirty thousand people altogether.

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about half of the electors of the parish. Under present state statutes, it only takes fifty percent, plus one of the affected areas. That is the distinction between this. I want to say this again about the constitution and this convention. We have constitutionalized certain charters. When we have that prerogative of constitutionalizing, we have the right and responsibility for making whatever corrections are necessary. As been brought out in discussions on yesterday, this is one of the inequities that exists upon home rule. We are talking about an unincorporated settlement, and we are talking about only the people in that unincorporated settlement having the right to determine whether they want to be incorporated or not. The same right, the same responsibility that's given to every parish throughout this state with the exception, as I understand it, of Baton Rouge and Plaquemines Parishes. I talked to Dr. Weiss this morning about his amendment and suggested that that wasn't no compromise whatsoever. In fact, what is basically happening is that some of the proponents of home rule are saying, "You are having a whole parish decide, or even a half of a parish deciding on what people in an unincorporated area, whether they want to incorporate or not. That's the same argument about Lafayette voting on New Orleans and New Orleans voting on some place in Cameron." If we are going to constitutionalize some of these charters, I think we ought to provide mechanism in this constitution that when charters become expressly prohibited as in this situation, that we ought to offer citizens of unincorporated area, whether it be Scotlandville, Central, Brooks Creek up in Shreveport, that right to incorporate. I don't see where this amendment is any compromise. I think what it does, it just puts us back where we began. I think we've hassled this problem very heartily on yesterday, and I would sincerely ask that you vote against this amendment because there is a distinction. The distinction is that everywhere throughout the state, it only takes fifty percent of the affected area to be concerned to offer the petition...not the whole parish. If we adopt this, it means that we haven't really solved the situation as we have tried to express it to this convention. I would ask that you vote against this amendment and support what this convention, in its wisdom has, has gotten, you know as a result of the actions on yesterday.

Further Discussion

Mr. Hayes Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the proposed amendment simply because it does something different from the way that every city was incorporated in the State of Louisiana. There is no city in this State of Louisiana that required a majority of the people voting in the entire parish to incorporate. Why would we want to impose something different on the cities now than what we have had in all the statutes required in the State of Louisiana: that you have a hundred and fifty people who wanted to incorporate, to present a petition to the governor and then incorporate? Dr. Weiss's amendment simply says that all the people in the entire parish--you take a parish like East Baton Rouge, for example, with about ten districts in it, with thirty-five thousand people; you say you are going to have nine districts going to decide what one district is going to do; nine districts can say "no" to one district. They could never incorporate. Can't you see you almost have the entire state against you?

The people in the sixty-third district--I have the record votes here with me today, vote to give a city. The people in Baton Rouge voted against it. They couldn't care less. The mayor of Baker here yesterday, who is in the city just above Scotlandville that you have mentioned here today, he votes against the people in Scotlandville incorporating while he runs his city in Baker. Can you understand that? Mr. Keen opposes the people in Scotlandville while he lives in the city of Baton Rouge. Can you understand that? It's hard to

understand these things, while they say, "Let everybody else stay in another city and vote whether the people out in the rural area pick up the garbage off the street," or what have you.

I rise in opposition to this amendment.

[Previous Question ordered.]

Closing

Mr. Weiss Fellow delegates, in summary, I'd like to point out that there are constitutional charters for home parish rule in three areas of this state: East Baton Rouge, Plaquemines and Jefferson. Apparently, one of these, East Baton Rouge, has a major problem of its own concern. Naturally, if there are any inequities, we would like in this constitution to provide some means to adjust these inequities. I might point out, however, that these inequities were created by the people of East Baton Rouge and the state legislature, not by other people, except that we, throughout the state, had to accept one of the amendments, and I imagine the 1940--some odd, that the people of the State of Louisiana voted on this as they did some other seven hundred amendments and accepted this. So the people of the state are ultimately saddled with the responsibility of the problem in East Baton Rouge Parish. However, as legislators have said at this podium, they do not deny those people within an area anything reasonable. Obviously, someone or some group from East Baton Rouge Parish perpetrated on the remaining people of East Baton Rouge Parish certain inequities, according to what has been presented to us here today. This problem, of course, we would like to adjust. I think the amendment, as proposed, does just that. In other words, this amendment allows the parish with a call vote of one-half of the electors, to have an election within the parish and do two things: Both incorporate or allow incorporation of unincorporated areas, and to adjust incorporated areas that need to be adjusted. It's a futuristic amendment. I recommend its acceptance, and I do not think that there are inequities in Baton Rouge Parish that are anyone's fault other than a legislative act, people within Baton Rouge themselves, and then forced it upon the people of Louisiana in the form of some seven hundred amendments, of which this was one, that we have to vote upon and knew very little about. I suggest that this is a constitutional method of fairly creating home rule parishes...

Questions

Mr. Alexander Dr. Weiss, are you aware of the fact that your amendment would negate the effects of Section 11 altogether, the aim and the objects of the section? Are you aware of that fact?

Mr. Weiss Negate which section, sir?

Mr. Alexander Section 11.

Mr. Weiss It's an amendment to Section 7, Reverend...Delegate Alexander.

Mr. Alexander Yes. But do you realize that it would be impossible ever, under any condition, for a new city or town to be formed out of a parish or some other incorporated subdivision?

Mr. Weiss No. This amendment allows clearly for that...for those unincorporated settlements may be incorporated according to the last two lines of this amendment.

Mr. Alexander Dr. Weiss, are you aware of the fact that if you are asking, if you had to obtain my permission to sue me, that you would never get that permission, and you would never sue me? Are you aware of that fact?

Mr. Weiss I think I have the right to sue as the present Bill of Rights calls for. But people do not have the right to create municipalities without

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Mr. [redacted] Kennedy, did you know at the time that the borders of Virginia, at one time, extended from the Atlantic to the Pacific? And if the Virginians had had their way, there wouldn't have been any other states?

2. *Computer-Integrated Control* (CIC) is the process of integrating the control system with the computer.

Amendment No. 1, on page 6, delete lines 16 through 25, both inclusive in their entirety, and delete all floor amendments thereto, and insert in lieu thereof the following:

"Section 11. No parish plan of government or home rule charter shall prohibit the incorporation of cities, towns, or villages as provided in Louisiana law."

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Mr. Guarisco: Mr. Chairman, ladies and gentlemen of the convention, I think I have what I feel is a solution to our dilemma insofar as Scotlandville and East Baton Rouge and what have you, by carrying the home rule concept statewide and allowing for the formation of a home rule or general law, and citizen of this state, or group of citizens as the case may be, by providing what amounts to a Bill of Rights for incorporation or self-determination. Now, I don't think in this convention that we should attempt to particularize the way we want to incorporate, etc. We will leave that to general law. The law presently has the various ways that it takes to comply with a method to incorporate your village, your town, or your city. I took out the word "settlement" because it leaves... nobody knows what it means. In this way, the group may be, if you can comply with the present general legislative act, method of incorporation, then you are entitled to incorporation, irrespective of a parish plan of government or a home rule charter. Now, if you want to apply the Scotlandville legislation, it is up to you and your opinion. I suppose if they meet the requirements of the legislature in all respects, then irrespective of what East Baton Rouge Parish's plan of government may be, they can still incorporate because it would be inconsistent with the 1974 Constitution. But I think we should be concerned with the people concerned with each and every area of the state. We can't have a group of Biafrans in this state. There are different places that are small now, had no control of the vote at the time a plan of government may have been adopted. Yet, twenty, thirty, forty years later, they are big enough to want to want to incorporate, but they can't because the home rule charter that was adopted thirty years before prevents them, but they don't quite have the vote to carry the entire parish. This is a Bill of Rights for everybody to incorporate who meets with the statutory requirements as set by law.

I yield to any questions.

Mr. Perez Mr. Guarisco, since your amendment is short, I'll read the entire amendment then ask you

"No parish plan of government or home rule charter shall prohibit the incorporation of cities, towns or villages as provided by general law."

What does that "as provided by general law"

Mr. Guarisco Very simply, the legislature sets up the general law by which the statutory method

But if that particular area complies with the law as it is at the time that they want to incorporate, then let them incorporate.

Mr. Perez: In other words, what you are saying, then, is you would like to do away with Section 7 and 8 and turn everything over to the legislature? Is that the idea?

Mr. Guarisco I don't want to do away with Section

2) *How many?* Seven or eight...

that at all. I just want to carry home rule down to its logical conclusion and let everybody have self-determination, not just Plaquemines Parish, or if Braithwaite was unincorporated, I would allow them to incorporate whether the Plaquemines Parish ~~UNRAID~~ allowed them to or not.

1. *Staphylococcus aureus* (ATCC 12228) was grown in tryptic soy broth (TSB) (Difco) supplemented with 0.5% yeast extract (Difco) and 0.5% glucose (Difco) at 37°C. The cells were harvested at mid-log phase (OD₆₀₀ = 0.5) and washed with phosphate-buffered saline (PBS) (pH 7.4). The cells were then resuspended in PBS and stored at 4°C until use.

Mr. JORDY. Mr. Chairman, when your committee was studying the testimony before what we considered the smaller business groups, the Congressional Small Business Administration, and the Small Business Administration, and government of business firms.

Mr. Guarisco It says a lot different from Section 3 in the fact that it prohibits a parish plan of government from prohibiting incorporation by a place who complies with the general law.

Further Discussion

Mr. Avant. Mr. Chairman and fellow delegates, I speak in favor of this amendment. Let me tell you what the present law is. It's contained in Section 52 of Title 33 of the Revised Statutes. It provides a simple procedure... 25 percent of the electors who must also contain an unincorporated area may file a petition with the governor setting forth by meets and bounds [metes and bounds] the area in which they propose to have a municipal corporation. It must contain 150 inhabitants. The governor, then, upon the presentation of such petition, shall cause a survey to be made of its contents of the matter and if he finds that it does comply with these requirements then governor is under a duty, under the statute, to declare the incorporation of that area. Now, for thirty days after that... this has to be advertised in the paper... this petition is open to all people who wish to sign it and so forth. All right, now, for thirty days after the governor's proclamation any interested citizen has the right to go into court and to attack the incorporation on two grounds. One, that the minimum requirements of this general statute law were not taken into consideration and is unreasonable. Now, the court will then pass on those questions if they are raised and if the court finds

the court can declare it invalid from which any
to apply to a parish... a home rule charter parish

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Further Discussion

Mr. J. Jackson I'll be very brief, ladies and gentlemen. We've talked it over with that segment of the East Baton Rouge delegation that has some problems with the industrial district. We believe that this amendment for those who are in favor of going to the industrial districts are those who opposed that. That would be a matter of decision by the legislature in terms of its enactment of an incorporation. We believe that this is the type of compromise that attempts to satisfy a majority of the convention, and we ask your support of it.

Further Discussion

Mr. Perez Mr. Chairman, and ladies and gentlemen of the convention, one of the main and primary reasons for an area to go into a home rule form of government is to provide for more efficient home rule or local government. In most cases the aim is to attempt and try to consolidate all of these small areas, all of these various districts, sewerage districts, water districts, etc., and to put all of that under a more efficient and effective local home rule form of government. We would be making a big mistake if we were to order through this constitutional provision all local home rule forms of government to put themselves in a position where after such home rule charters had been adopted, the major objective of consolidation would be destroyed through the fracturing or cutting-up of one home rule charter area into several smaller areas. So, I say to you again, this is basically a bad provision and that you should not require people in their own interest when they have a determination as to what they want to do in their own area...you should not require them to have such a provision which would make it possible for the fracturing or the dividing-up of home rule areas. I would, also, call your attention again, please, read the amendment carefully. I'll read it to you one more time. "No parish plan of government or home rule charter shall prohibit the incorporation of cities, towns or villages as provided by general law." I really do not know what it means. I urge you to defeat the amendment.

Questions

Mr. J. Jackson Mr. Perez, under Section 5, I think we use the same language when we talk about incorporation, merger or consolidation. Now, how do you say that by general law we can do it under Section 5, but when we use similar language which has the same intent, we can't do it under 11?

Mr. Perez Section 5 strictly deals with legislative charters, that is the authorization for the legislature to create legislative charters and has nothing to do with constitutionally created home rule charters. They are two different things altogether, and once the people of an area adopt a home rule charter under the constitution we should not tell them how they should run their business with respect to dividing that area into several smaller areas.

Mr. Winchester Mr. Perez, in the event that St. Mary Parish adopted a home rule charter and the five municipal towns in there adopted and voted upon by the people the home rule charters operating under home rule charter one of the localities wanted to incorporate, what would be the disadvantages of allowing that?

Mr. Perez Well, I don't say there would be any disadvantages but the...what should be done is when the home rule charter is adopted and voted upon by the people if that is a possibility in the future that home rule charter could so provide if the people wanted to provide that. In other words, there is nothing which would prohibit a home rule charter from having such a provision. My opposition is having the constitution prohibit the people on a local basis from doing what they would want to do, but if in St. Mary you want to provide for those

municipalities at a later time, you've got the perfect right to do it if you adopt a home rule charter, through that home rule charter itself.

Further Discussion

Mr. Hayes Mr. Chairman and delegates to the convention, I rise in support of the amendment as a compromise. We've tried all day to try to make everybody as happy as we could on Section 11, and it looks like the only amendment that we have come up with that looks like it cuts cross and helps everybody get the problems...it happens to be the one that Mr. Guarisco came up with and I fully endorse it. One of the things that we want here in East Baton Rouge Parish and I have found it in my area meeting and I put a copy of it on everybody's desk is that we did not want to be treated any different from anybody else in the state. So, I fully endorse the amendment Mr. Guarisco has.

Further Discussion

Mr. Haynes Mr. Chairman and members of this delegation, I remember quite many years ago the great Wendell Willkie wrote a book and gave this book the title One World. It was a few years after his passing that I heard his son, Phillip Willkie, addressing a distinguished delegation and he gave the title of his address, "One World or No World." I can feel us working here in this constitution in order that we might have one state, and I would submit to you that we're going to have one state or one parish or no state or no parish at all. I've seen Louisiana for a great many years and sometimes now, I think I see the dry bones of yesteryears enshrining and walking around in this convention, and I resent any effort on the part of any delegate to this convention to stifle the efforts of any people that they might have life and that they might have liberty and that they might have the pursuit of happiness that are guarantees of this constitution. We want this resolution passed and I rise to support the resolution because we want self-determination and we believe people are entitled to self-determination. I thought about a few years ago when we had a distinguished dignitary to come to Baton Rouge, the capital city of Louisiana, and when they had the meeting at the airport in Scotlandville we were embarrassed and the parade had to rush through in order that they might not see the blights and blemishes of discrimination of past years. I believe one of the main entrances...Highway 61...and when Ole Miss comes down here to play L.S.U. now and they have journeyed forth back to Ole Miss, we're going to be concerned about what the people coming into our city think about our city, and the first impression is usually a lasting impression. Somebody has said that...somebody came here this morning and as I understand it with our distinguished mayor who has been serving us from 16 to 20 years, and said that we didn't have the tax base. We are taxed heavier than anybody else, and we're supporting things that we are not getting. I remember the people up in Lincoln Parish gave to Grambling, Louisiana home rule and incorporated Grambling. Now the people of Lincoln Parish and the people of north Louisiana are indeed proud of Grambling, Louisiana because it's a delightful city that has self-determination, that has home rule, that has all of the things that we talk about. Mr. Chairman and members of this delegation, I would ask you to forget about those dry bones of yesteryears that might walk around in the walls of this convention and might try to persuade the people of today that we of this generation, writing a constitution for the 20th century would revert to 1921 and even go back beyond that date, and that we might give to the people of this state...whether those people be black or white, the things that are justly due those people. I ask you to pass this amendment.

[Previous Question 70-38. Motion to reconsider tabled.]

Governmental Subdivisions

Section 12. Local governmental subdivisions shall not:

1. Incur debt payable from ad valorem tax receipts maturing more than 40 years from the time that it is incurred.
2. To fine and provide for the punishment of a felony or.
3. Enact private or civil ordinances governing civil relationships."

Explanation

Mr. Lanfer. Mr. Chairman, fellow delegates, we discussed some of these matters in the discussion of Sections 7, 8 and 9, which we've previously adopted. These are general limitations to be placed on local governmental subdivisions. The first one with the prohibition against the incurring debt payable from ad valorem tax receipts maturing more than 40 years is the present constitution. The prohibition against the defining and providing for the punishment of a felony is standard in this type of an approach, and the prohibition against the enactment of private or civil ordinances governing civil relationships is intended to preempt from local government the power to pass on such things as might be contained in the civil code, the workman's compensation law, the trust code, the corporation law and things of this type. I think this is a standard type of provision where you have a restraint of authority and if there are any questions, I'll be happy to try and answer them.

Amendments

Mr. Poynt. Amendment No. 1, by Mr. O'Neill, page 6, at the end of line 31 change the period to a semicolon and add the following: "or, 4. Set prices of private goods or services other than those of public utilities or common carriers subject to their regulations."

Amendment No. 2, on page 6, at the end of line 31 change the period to a semicolon and add the following: "or, 5. Engage in wholesale or retail trade or manufacturing enterprises."

Mr. O'Neill. Ladies and gentlemen of the convention, I have not spoken on any section of this Local Government Article. I have asked several questions of different speakers, nor have I offered any amendments. Section 12 is the place where I think the amendments I have will be most effective. Up until now, and please listen to me, we have provided that local government shall have all power not prohibited to them in the constitution or by the legislature which means that local governments can now do anything not prohibited to them. Now, look at Section 12 closely and read with me if you will, Section 12. "Local governmental subdivisions shall not..." and there is a listing. The Local Government Committee has provided three shall nots. I intend to offer to you Section 5 and Section 6. Two new prohibitions of things that local governmental subdivisions cannot do. The first of these is set prices of private goods or services other

subject to their regulations. Now, let me explain to you exactly what this does. Right now we have

ture. The milk prices are set statewide...unim- mental subdivisions would be empowered to enact their own milk price-fixing laws, and I don't single out milk for any particular reason. It's just one that comes to mind. If we do not prohibit this,

prices of private goods and private services on an arbitrary basis and these prices and regulations a

place. I can foresee simply because it's government's prerogative to get into the economics area that local governmental subdivisions will be into all sorts of pricing laws. You'll go from Baton Rouge where you'll pay 59 cents for a half-gallon of milk to New Orleans where you'll pay 90 cents a half-gallon, and it'll all be regulated by local governments. I am attempting to prohibit this. Now, in my first amendment, Number 4, it says "set prices of private goods or services other than those of public utilities or common carriers subject to their regulation." Now, this would allow local governments who do own their own utility systems to regulate the prices that these utility systems charge for their services, and I come from a community up in Baker which does own their own public system, and the city sets the rate. I'm not against this. I think if they own the system, they should be able to regulate what is charged by the system. The other exception is common carriers. This would be transit companies, bus systems and the problems that Mr. Chatelein had in previous sections. These are two just and proper exceptions. Now, you question well if local governments can't set prices, who will? I submit to you that the legislature will. They will set uniform price-fixing laws, and you won't have a hodgepodge of regulation from one local governmental subdivision to another. Let's move to the second amendment and make sure that you have the proper copy. It's "engage in wholesale or retail trade or manufacturing enterprises." Read it in conjunction with Section 12. "Local governmental subdivisions shall not engage in wholesale or retail trade or manufacturing enterprises." As the amendment was first drawn it included construction. We ran into the problem where police juries do indeed build their own roads and do have some construction at different times. Therefore, we took construction out of here. The only limitation on local governments here is that they shall not engage in wholesale or retail trade or manufacturing enterprises. Now, I don't think this is the proper sphere for local government to be in...operating private businesses against other people in the field, and I think that you would probably have to agree with that if you believe in the free enterprise system. My amendments, as a whole, will allow the legislature to take care of price-fixing if they so choose to do it. I've spoken to the various interests, agricultural interests, and they have not made any objections known to me. I think they feel that the legislature is the proper area to set these prices if they are going to be set, and not from local governmental subdivision to another. Now, hear me out very carefully. We have provided, and don't let anyone tell you any differently, that local governmental subdivisions shall have the prohibited to them in this constitution and law. Remember that. I am stating a

subdivisions can not do these two things. I think the amendments are very simple. I think they are proper exceptions to put in this Number 12.

Questions

Mr. De Brieux. Mr. Chairman, I have a question at the present time we are discussing the amendments to Section 12. I am wondering if the amendments to Section 12, Number 4, "set prices of private goods or services other than those of public utilities or common carriers subject to their regulations," and Number 5, "engage in wholesale or retail trade or manufacturing enterprises," are intended to prohibit local governments from setting prices for milk, or other agricultural products, or from engaging in the sale of such products. I am wondering if the amendments are intended to prohibit local governments from setting prices for milk, or other agricultural products, or from engaging in the sale of such products. I am wondering if the amendments are intended to prohibit local governments from setting prices for milk, or other agricultural products, or from engaging in the sale of such products.

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your question correctly, and would be proper under this section.

Mr. De Blieux Whether they only give their local government the right to...to organize those industrial plants, sites and a...through bond issues, that's a...I'm just wondering in view of that if they...if it could be considered that the local governing body is engaged in manufacturing enterprises.

Mr. O'Neill No, Senator De Blieux I don't think so...and that's not what it's intended to do.

Mr. Denberry Delegate O'Neill, I'm referring now to your second amendment. Is it not correct that there are in Louisiana a number of private organizations...private corporations engaged in water supply business?

Mr. O'Neill I'm not familiar with them, Mr. Denberry.

Mr. Denberry Is it not a fact that there are a number of private corporations in Louisiana engaged in the disposal and sale of products from garbage?

Mr. O'Neill I'm not familiar with those either, Mr. Denberry.

Mr. Denberry Is it not a fact that there are a number of private corporations in Louisiana engaged in the sale of electrical power?

Mr. O'Neill Mr. Denberry I think all of these that you refer to are public utilities, to be perfectly honest with you.

Mr. Denberry As I understand it however, sir, on your second amendment you do not refer to "public utilities". You merely prohibit a "municipality or parish from engaging in wholesale or retail trade on manufacturing enterprises". Is that not correct, sir?

Mr. O'Neill Yes, sir and I purposely excluded "public utilities", which I...

Mr. Denberry But you did not exclude "public utilities". Mr. O'Neill, that's the question I asked you. It does not exclude them, does it?

Mr. O'Neill Where does it include them?

Mr. Denberry It prohibits a "municipality or parish" as I understand your amendment, "from engaging in wholesale or retail trade or manufacturing enterprises". It says absolutely nothing about "public utilities" and it seems to me you are thereby prohibiting...the operation of a water system by municipality or a parish; the operation of a garbage system and the resale of any...any resources recovered from that garbage by a municipality or a parish, the purchase and resale of electricity, or even the manufacturing of electricity by a municipality or a parish". Now I don't know that you intended to do that, but do you not agree that your amendment would prohibit this?

Mr. O'Neill Mr. Denberry, it's not intended too, and I don't honestly think that it does.

Mr. Casey Mr. O'Neill, don't you think that we would be taking an awfully serious chance, and risk by including something like this in the constitution, that rightfully belongs and should be contained in statutes, because we don't know what the full effect of amendments of this type are going to be?

Mr. O'Neill Well, Mr. Casey we don't know what the full effect of the entire Local Government article will be, and so I don't think that it matters that we're going to put absolute prohibitions against them like these. And, it's my intention to put an absolute prohibition and to allow no flexibility in

these areas.

Mr. Casey But, do you not agree that Mr. Denberry makes some very valid points, and that these particularly paragraph...subparagraph 5 could be affecting "public utilities" because "public utilities" are not specifically excluded from paragraph 5?

Mr. O'Neill Would it satisfy you to exclude "public utilities"?

Mr. Casey I would be against the amendment under any circumstances, Mr. O'Neill. It would be better than it is now, if you excluded "public utilities", however.

Mr. Duval Mr. O'Neill, would this prevent a municipality like the City of Houma from selling gas?

Mr. O'Neill Is that a public utility, Mr. Duval?

Mr. Duval Is what a public utility, "the City of Houma"?

Mr. O'Neill Gas.

Mr. Duval Gas, is not a "public utility". No.

Mr. O'Neill Is that a product...

Mr. Duval It is a substance composed of...

Mr. O'Neill ..."public utility"

Mr. Duval No, sir. It's something that comes from an oil company, drilling under the ground. And they sell it. To private individuals. Now would this prevent this...

Further Discussion

Mr. Stovall Mr. Chairman, members of the delegation, it seems to me that in the Bill or Rights Article we had provision there dealing with Freedom of Commerce, that section was eliminated, and it seems to me this is an effort to bring back this issue before us, we have already dealt with it and, therefore, I move the previous question.

[Motion for Previous Question Rejected:
35-67.]

Further Discussion

Mr. Casey Mr. Chairman, and delegates I'll be very, very brief. This doesn't belong in the constitution. It's as simple as that. Why tie our hands in the constitution when we don't have to, when the legislature by general law, at a later date can come back and say the very same thing, and possible do it in a very eloquent manner, whereby proper study may have been given to the subject matter, and whereby we're not know at this time if we adopt it what we're really locking into the constitution? We have to stay flexible. We have to give proper study to something like this and if the legislature wishes to take two years in deliberating on matters of this type, and then do it in a...in a manner whereby we have given very much thought to it, and research, and then adopt something of this type, fine. But the legislature can do it, we don't have to do it in the constitution. I strenuously urge you to reject both amendments, or even the first amendment if that's the only one that we vote on. I might point out, also, under the second amendment that the City of New Orleans, for instance does its own street repairing on many occasions that I understand has its plant...for blacktopping and asphalt, and that would be prohibited under this constitutional amendment. Just reject both of them. This doesn't belong here.

Further Discussion

Mr. Cannon Again I rise to oppose this amendment. I believe the constitution states that, a public utility is

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some commentaries on this point but very little litigation. I asked the staff to research this, and I found very few cases on this particular point. We did find one law review article. For the sake of the record it is 48, Minnesota Law Review, Page 643. It deals in part with this particular problem of which way you should go on this point. Should you leave it rigid or should you make it flexible? Of course the problem inherent in taking the flexibility approach is that at what point in time does an exercise of a power or function become necessary in order to affect a civil relationship, or must you affect that civil relationship in order to have an orderly exercise of your power and function. The primary concern in the field here is that if you do allow this flexibility, that it be done so in a very definite fashion so that there is not ambiguity in the exercise. So that everybody knows specifically the limits within which the local unit of government can act. Specifically I'd like to quote from this Law Review article that I gave you. It says this: "However, even if the private law enacted by the municipality does not appear to have a serious disruptive effect on the public order created by general law, it should not be given effect unless it is demonstrably of some importance to the implementation of a municipal policy or program. The prevailing assumption has been that home rule powers do not extend to the enactment of private law." Deviations from that understanding should be permitted only in the event of clear necessity." Now I would suggest that if you would review Representative Casey's proposal, it would provide that the legislature could make that determination, and by specifics or special law provide for the activity of a local unit of government in a specified area. Another problem...I don't know if Representative Casey went into it in any detail...but apparently this prohibition may well affect some existing ordinances in the city of New Orleans. Therefore, it is my feeling that this is a worthwhile provision because it plans for the future. Of course my statement is made with this understanding. The issue of whether or not the exercise of the activity, the regulation of the activity, is incidental to the power and function, will be one that will ultimately have to be resolved by the courts. There's just no way around that problem that I can see, although the legislature can alleviate a lot of that problem by the manner in which they frame the laws to allow the exception. In other words what this thing does is sort of a Dillon's Rule under a prohibition that we have put against local governments. In other words as an exception to this prohibition in specific cases as authorized by the legislature, the local units of government can act in this area. I think that this would give more flexibility to the system. I think it would be worthwhile to consider by you, and I would ask its favorable passage.

Thank you, Mr. Chairman. I'll be glad to yield to any questions.

[Amendment read. Previous question answered. Record vote taken. Amendment adopted: 12-6. Motion to reconsider refused.]

Amendments

Mr. Poynter These amendments are sent up by Delegates Avant, Newton, Jack, Goldman and many other Coauthors.

Amendment No. 1, on page 6, line 27, immediately after the numeral and punctuation "12," insert the letter "(A)".

Amendment No. 2, on page 6, between lines 31 and 32, insert the following:

"(B) Notwithstanding any provision of any plan of local government or any home rule charter, or other provision of this article, the legislature may by general law applicable throughout the state or based upon any reasonable classification exercise the police power of the state in the parishes, municipalities, and other local governmental subdivisions of the state."

Explanation

Mr. Avant Mr. Chairman and fellow delegates, I respectfully submit to you that this is an essential amendment. Now, there has been a provision corresponding to this in the Constitution of 1898, 1913, and 1921. There is a corresponding provision in the charter of the city of New Orleans in its present home rule charter. Now, first I think I should make an explanation which would be obvious to most of you, I'm sure. But the police power...what is the police power? What are we talking about? The police power is that power of government which gives government the right by law to regulate the conduct of individuals in order to promote and ensure the health, safety, welfare and morals of the general public. Now that is what the police power is. Examples of the police power immediately pop into your mind, but every building code is an exercise of the police power. A law which would outlaw pornographic materials, or houses of prostitution is an exercise of the police power. A speed limit is an exercise of the police power. Heretofore, as I've said there has been a provision in all of our preceding constitutions which specifically recognized the fact that we are a state; that we are not a league of independent city-states. That the police power of the state, that is the power to legislate so as to ensure the protection of the health, and safety, and welfare of all of the people of the state as the citizens of the state, is vested in the legislature of the state through the representatives of the people in that legislature. Now, I tell you that I am sorely afraid that under the articles that we have adopted so far in this...the sections that we have adopted so far in this article that the police power of the state has been abridged. It has been abdicated, I am afraid, to a large extent to local government. I am afraid that the legislature of this state if a municipal corporation had exercised the police power in a certain way could not come along and through the legislature exercise the police power in an inconsistent manner. I say that this is essential to make it clear, to make it abundantly clear that we are still a state, and that the representatives of the people through the legislature can exercise the police power of the state for the good of all of the citizens of the state irrespective of where they may live. This is nothing novel. It's nothing unique; it's nothing unusual. It's in the present constitution; it's been in all of our prior constitutions, at least back to 1898. It is presently in the charter of the city of New Orleans, and I can see no valid objections on the part of anyone to the adoption of this amendment.

Questions

Mr. Lanier Mr. Avant, is it your opinion that under the police power and that the legislature could provide for the minimum wages in retirement benefits of public employees, notwithstanding the provisions of Section 8 as we have adopted?

Mr. Avant Certain public employees if it was necessary in order to promote the safety and health of the people of the state as a whole.

Mr. Lanier Well, would it be your intention by this law to abrogate the provisions of protecting organization and structure of policemen specifically?

Mr. Avant Mr. Lanier, I never subscribed to the theory and the judicial interpretation of that which said that the pay of firemen and the working conditions of firemen and policemen is a matter of structure and organization. I think that is an exercise of the police power because I believe that I, as a citizen of the State of Louisiana no matter where I may travel in this state...if I stay in a hotel or a motel, or I drive my automobiles in a particular city...I think that I am as a citizen entitled to certain minimum standards of fire and police protection, and that if local government

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"a power inherent in every sovereignty to govern men and things and thereunder the legislature may within constitutional limits prescribe regulations for promotion of public health, safety, morals and general welfare." That is the power that you would be according to the state by the adoption of this amendment, and you would make it clear that, insofar as the general welfare is concerned, no limited, special provision can be enacted by way of ordinance or provision in the charter or plan of government that would be inimical to the welfare of the people of the state as a whole. Don't be misled by some of the diversionary approaches by those who would oppose this concept. If we do not, if we do not provide in the constitution as set forth in this amendment, then the entire power of state government will be subordinated to the proliferating activities of the municipal and local government throughout the state. That I know, no delegate to this convention really wants.

I urge you to adopt this amendment.

Questions

Mr. Jenkins Mr. Gravel, Mr. Burson said that his amendment that he's going to come with later is the same as in the present constitution. Now, that's true, but in the present constitution isn't it also true that we did not grant all of the tremendous authority to local governments that we're granting in this one? If we're going to grant the authority here, don't we need to further protect the police power of the state?

Mr. Gravel Absolutely. That's precisely why this amendment is in this particular article and refers to the other provisions of this article. That's precisely why the amendment is here placed.

Mr. Duval Familie, do you agree with Mr. Avant's interpretation of the language here that it allows the state to legislate as to firemen and policemen under this language? Do you agree with Mr. Avant's interpretation?

Mr. Gravel I wasn't listening particularly to the interpretation that he placed on it. I heard the question, but I didn't remember exactly what he said.

Mr. Duval Well, I think he said, in fact I'm sure he said, that "this language would basically allow the state under the exercise of the police power to legislate as to the wages of firemen and policemen working for a parochial unit. Do you agree with that interpretation?"

Mr. Gravel No necessarily, I think I agree with that provision...was permitted I think in a case, the Baton Rouge La Fleur case, based upon the provisions that were in the East Baton Rouge Parish charter. Let me make sure there's no misunderstanding about this I think that this provision could apply if the legislature wanted to pass a law applicable to all policemen and firemen throughout the entire state. I think that this provision could apply if the legislature did feel that it was necessary under the police power to legislate.

Mr. Duval So it's actually, not diversionary to say that some of the issues raised in this amendment is certainly the issue presented in a portion of Section 16 of the proposal. Isn't that true, sir?

Mr. Gravel It might be, yes.

Mr. Lanier Mr. Gravel, in the Judiciary Article I ~~believe~~ said that the sheriff was the chief law enforcement officer in the parish. This provision provides "notwithstanding any provision of any plan, ~~or~~ ^{or} ~~any~~ ^{any} home rule charter," et cetera...

Mr. Gravel Wait, read the et cetera and I think I can't answer your own question.

Mr. Lanier "Or any other provision of this ar-

ticle." What effect would this have on the sheriffs?

Mr. Gravel It wouldn't have any reference to the Judiciary provisions of the constitution, because we've said "or any other provision of this article."

Further Discussion

Mr. Arnette After having heard the definition of "police power" as given by Webster's Dictionary, or wherever the definition was gotten, I really don't know but I'd say it's a pretty accurate definition, but a little more accurate definition is "that the state may do anything they want to unless it is prohibited." Anything! Because you can always class something under health, education, welfare, morals, safety. You can say anything is under one of these classifications. So unless you prevent the state from doing something, they've got the power to do it under the police power. Now what this amendment means is that they can do anything they want to in your local home rule area and class it under one of these things, under a classification of say "Well, we'll just have this law apply to cities over four hundred thousand people, or over a quarter of a million." This is a reasonable classification if they want to apply under them, or they could have it apply to cities of less than ten thousand, or less than twenty thousand, or parishes of less than fifty thousand. It would be very simple to have these classifications. They could completely destroy anything they wanted to in the way of home rule. The people of this convention I think fought long and hard for home rule. They want home rule. We adopted seven, eight and nine of this article dealing with home rule. Good strong home rule provisions, and this one amendment to a section coming now could completely destroy all of those sections. This is the thing that really worries me. When you say "no home rule charter notwithstanding, or plan of government notwithstanding," this could completely destroy the theory of home rule as we have adopted it in Sections 7, 8, and 9. If you want the legislature to have the power to do just about anything they want to in your local municipality or your local parish, go ahead and pass this amendment. Mr. Dennerly's got an amendment coming up later on that is precisely the same thing as the old constitution, as I understand it, which doesn't make this exception, or saying that "home rule charters notwithstanding" or "plans of government notwithstanding." I think it's a much better provision. I think we ought to defeat this amendment and possibly go with Mr. Dennerly's.

Thank you very much.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, when I got here Friday, we explained that cities and municipalities could have maximum home rule, or they could have only what the legislature gave them. By a narrow vote, you gave the cities and municipalities in the home rule unit maximum authority over their own business.

On Tuesday afternoon, we came back and we fought over the same exercise almost on the same questions, and by a narrow vote you voted again to give cities and home rule units maximum ability to operate their own business. Now, Mr. Avant, here at the microphone earlier, in, I think, a rare burst of candor, answered the question asked him by Mr. Lanier about the effect of his amendment on the pay scales of firemen and policemen, and Mr. Avant very honestly answered that the effect of his amendment would permit the legislature to set the wages and working conditions of firemen and policemen and the municipalities would have to come up with the money to pay for it. I don't believe this speaks very loudly of home rule. In my municipality, the city fathers and the citizens pay their policemen very well, and their firemen, and their working conditions are excellent. But every now and then, the legislature passes an act and says "All right, Shreveport, no matter what your budget says, come up with the

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money and pay your policemen and firemen, would you say you have to pay them." Is that some rule?

When the State Police came into my parish, I raided the bingo games, under the protection of the Avont amendment. I ask you one question: Is that home rule? I think you ought to very carefully consider the merits of the Avont amendment and consider it and weigh it in your mind before you punch the button one way or the other. The Avont amendment is the opposite of the kind of home rule that this convention has afforded our parishes and municipalities in the past few days of the general debate on these subject matters.

I urge you to vote "no" on the Auer amendment. While I am up, so I don't have to get back up, I urge you to vote "yes" on the Denberry amendment.

Mr. Rayburn Mr. Stagg, I'm only seeking information. I have seen several occasions in this state where, in a little small village, they had what is commonly known over in my section as a "speed trap." Everybody come through, they shook them down. If they had a car that was thirty-seven (and they have twenty-seven). We had to in the legislature, break up a few of those things. I wonder if we would get caught in those predicaments again? Of course, I hope we never do under these good government days we all enjoy now. Would we have any remedy to prevent having that kind of thing going on in this state, because I know, and I think you know, it has happened.

Senator Rayburn, the remedy does not
lie in the Avant amendment; I promise you that.

Stagg, I'm a little confused about [redacted] to playing bingo at a charity. Suppose a particular area was allowing real bad crimes to take place and was not prosecuting, not doing anything about it. Is it your argument to this convention that violation of law, breaking of laws, is something that we should never address ourselves to?

Mr. Stagg Mr. Roy, you and I fought this exact same question out when the debate occurred in the Executive Article on the powers of the attorney general and the powers of the district attorney when we were debating the Judiciary Article. You and I have not agreed on this since we got in this room. There is nothing you are going to say that's going to make me agree with you now.

Q. Now, I just asked you: do you support the breaking of laws?

Mr. Riecke. Mr. Chairman, ladies and gentlemen, I've been a long time since I've been up here, but I'd like to oppose this Avant amendment. I'd like to remind the delegates here today of something that happened in New Orleans during the school crisis when the governor ordered us to close our public schools of New Orleans, and the school board of New Orleans refused to do it. The governor, at the time, sent his police down to New Orleans and seized the books of the school board; they seized the... they put out the superintendent of schools, and they seized the seal of the Orleans Parish and they took it to a school board in New Orleans, I can't remember the name of it, and they took it to the school board of New Orleans. I think that's the only school board in the state that will vote it down. Thank you.

same area that you are talking about, the state

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famous period of time in Louisiana history when we were stopped by this famous Grevenberg, Superintendent of Police. Do you remember 1944-1945 Louisiana's history when you were afraid to get out of your home; afraid to get on the highways. We want some more of this?

Mr. Riecke Mr. Chatelain, answering your question, I am older than you, if you'll look at the record. I'm the third oldest man in this whole delegation. You're much younger than...you're just a kid.

Further Discussion

Mr. Jack: Mr. Chairman and fellow delegates, I rise in support of this amendment of which I am a co-author. Now I want to first let you know that a police officer and a fireman is more than a city employee. We're not dealing with regular home rule with this amendment. I'm a great advocate of home rule, but it's not in the home rule amendment which you can do by throttling the police and the firemen. It was all well for somebody a minute ago to joke about Mr. Grevenberg. I have no quarrel with that, but let me tell you, when you need help, if your house is on fire, you call the fire department; if there is a medical emergency, you call the police. Now under the police power, where health, welfare and safety is involved, the state has a right to step in, and should have that right.

Now let me tell you this. I have had a brother
served by the quick action of the police. In 1929,
I'm going to tell these instances in a hurry to
show you that if it wasn't for good firemen, I
wouldn't be here. I was in for good policemen,
younger brother would have been in 1929.
The bandits shot one customer and killed him and
shot at my brother just as Detective L.V. Smith
of the Shreveport Police Department shot him through
the back, right through the heart, and he fell
into the crowd. The crowd then shot at the
brother, and the bullet hit between my younger
brother and the helper at the filling station.

Now, I don't want to leave the police power of having policemen and regulating entirely up to local authorities. If they don't do the job right, get good police, pay them properly, good firemen, pay them properly, good working conditions, I want the law where the legislature can step in. We had a fire right here in the White House Inn since July 5, in the afternoon. My wife and I were in the dining room, and a bunch of firemen came out here, the fire was up in a flue. If you didn't have a good fire department, good paid men, and good men that know fires, those lurking coals, or whatever there are up in the flue, could have stayed there all day. At o'clock in the morning you could have had a fire and burned up. Let me tell you, I want good fire departments. I'm from Shreveport. I'm going to good fire departments wherever I go. I don't like taxes. I'm entitled to good police departments. Let me tell me that's how I rule that case. I choose to have a rotten or a good fire department. I don't want starvation wages and those things.

the lobby burned up. I was mad because they hadn't

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[Rules Suspended to allow additional time.]

Further Discussion

Mr. Jack Let me tell you this. When you walk down like I did, rather on the elevator, and you came out into that lobby and saw it all burned up, and you asked the clerk why you weren't notified, and he pointed to where the fire started over there at the telephone switchboard and the registration desk burned up. He said, "What you ought to do, Mister, instead of griping, you ought to be thanking the Lord they've got a good fire department out here that put it out."

Now, I don't want to trade good police and firemen. I say, and repeat, that this is not a question of home rule. It could make very little difference to me what and who the employees were in Baton Rouge have to do with collecting this or collecting that, and those local matters. But it makes a difference who the police are. We have police protection right here at this convention. I guess they still search people that come in. I'm glad they did. I know at the beginning they searched the wives. I'm glad they did. I want to live, and the way to live is with good firemen and police. Firemen saved my house in the depression when I didn't have any insurance on it. Now I say, in closing, that this has nothing to do with violating home rule. I voted for all of those home rule provisions. I say to go along with this amendment, to go with Section 16.

Further Discussion

Mr. Juneau Mr. Chairman and fellow delegates, you know, as I recollect, it wasn't but four days ago we voted on the section and the vote was relatively close for final passage, whether or not we wanted to make...or have home rule in this state. As I recall the vote, it was the rule of this convention that we would have home rule in this state.

The next thing that I remember, in the newspapers and on the radio and on the television, that we're bogging down and we can't finish and nobody understands why. Well, what I am telling you is, is what this amendment is going to do is, in essence, abolish what we did a mere four days ago. This is simply nothing but a frame around the same picture that we had four days ago. I don't think that anybody in this convention was fooled by the fact that we didn't know this was coming. It was just a question of what place it was going to be inserted.

I submit to you that the issue that's concerned with a lot of people is in Section 16, and I'm willing to face that issue when we get to it. But what they've created here is a monster which goes far and beyond what is contemplated in the issue of a fireman and policeman. I also submit to you that we've got to get this convention rolling. I submit to you that I have, during the course of this convention, abided by the decisions on final passage when it was adverse to what I had voted earlier on amendment. I submit to you that that's the same issue we face here. If you want to stand by the will of this convention and get this convention moving, and if you want to finish by January, let's defeat this kind of amendment and any other kind of amendment which will, in essence, defeat what we did a simple four days ago.

Thank you very much.

Further Discussion

Mr. Denberry Mr. Chairman, delegates to the convention, Mr. Avant's amendment, which he has explained to you, contains a total of fifty-six words. The amendment which I have introduced, and will shortly be before you, contains basically the same thing in a total of twelve words. But in addition to that, I would point out to you that the language in the Avant amendment goes far beyond the language in the present constitution. I don't think anyone who is interested in home rule, and certainly I do not, believe that the exercise of the police power

of the state should ever be abridged. As a matter of fact, at the time that the charter of the city of New Orleans was adopted, it was adopted under an amendment to the '21 Constitution which says that "nothing in the amendment shall be construed as restricting the police power of the state." Now it seems to me that's all the language we really need in here. The language that Mr. Avant has put in his amendment goes far beyond, in my opinion, what is necessary in order to protect what all of the previous speakers have talked about.

In Section 6, which we adopted in this article a few days ago, the legislature is given the authority to classify municipalities of parishes on a reasonable basis. So that portion of this is unnecessary. It's certainly unnecessary to say any more than "nothing in this article shall be...shall restrict" instead of saying "notwithstanding any provision, etc.," as is set forth in the Avant amendment. It seems to me that there's been enough concern expressed by those who are...who voted for the home rule provisions in Sections 7, 8 and 9 to warrant careful consideration of not adopting the Avant amendment, but of adopting a short phrase which says that "the police power of the state is paramount." I believe everyone will agree that it should be paramount. But certainly, if the state does not exercise its police power, it does not only exercise it through statute, if it does not exercise the police power, then the local, the parishes and the municipalities should certainly have the right to exercise those police powers.

If the legislature does not adopt a statute concerning the construction of high rise buildings, as suggested by Mr. Avant, is there any reason why the City of New Orleans should not adopt an ordinance to this effect--or the City of Baton Rouge, or the City of Alexandria, or any of the other municipalities, or any of the parishes for that matter.

If there is any question, and there is question as expressed by some of the previous speakers, that the language in the Avant amendment might restrict the power of local government to exercise those police powers which by virtue of this constitution have been delegated to them, but can always be taken away by a general statute, then I should think you should vote against the Avant amendment, and I strongly recommend it.

I will be pleased to answer any questions.

Questions

Mr. Deshotels Delegate Moise, in all candor...

Mr. Denberry Moise?

Mr. Deshotels We...we address people by their first name where I come from.

Mr. Denberry Oui...

Mr. Deshotels In all candor, we've been told this would destroy the provision that we have for local government and home rule that we adopted earlier. Now, you talk in general, broad terms and you say that this is duplicitous, that we already have this...What...there has been some indication of this being sinister and the back door approach. What does it do that you are afraid of?

Mr. Denberry Mr. Deshotels, I don't know. I said "If there is any doubt in your mind about it, then you should vote against it." But it doesn't, it certainly...it certainly is no more comprehensive than stating, "nothing in this article shall restrict the police power of this state," which is the suggestion that I have made in my proposal.

Mr. Deshotels Well, then you are saying that you don't know whether there really is any difference from yours and this one, other than that it's got a lot of verbiage.

Mr. Denberry That's right. It's got forty-four words more. I think it is too prolix to get into the constitution.

Mr. Tapper: I think that's about right, except for additional words?

Mr. Denberry: I'm inclined to think that the purpose of Mr. Avant's amendment is very similar to the purpose of mine. We had discussed this several days ago, together.

Mr. Tapper: Yes, sir. Now, the meaning of my question is this. Assuming that the local governing bodies decide to exercise the police power...the state police power, could they not then say that the state has no further power because the constitution has given us the right to exercise it? We are exercising it; therefore, the state legislature does not have the right to exercise any more.

Mr. Denberry: Not so long, Mr. Tapper, as you have language such as I have suggested, which says "nothing in this article shall restrict the police power of the state."

Further Discussion

Mr. Casey: The Chairman said I am only entitled to brief remarks, so I'll say very briefly that I strongly urge that you vote against this amendment. Mr. Jeneau eloquently indicated that what we have given to home rule three or four days ago, we are now taking a great amount of that home rule away.

I must refer you, however, to the first couple of lines of this particular...in Amendment No. 2, the first couple of lines of Paragraph (B), "Notwithstanding any provision of any plan of local government or any home rule charter." I think that amendment goes much farther than Mr. Denberry's amendment or than Mr. Burson's amendment. I think there is much merit for the state retaining its police powers. However, we don't know what the overall effect of this particular amendment is on existing home rule charters. We don't know what many home rule charters at this time do now exist. We have previously recognized those home rule charters in preceding sections.

We have talked very much about police power, which is a rather difficult term to define, to say the least. But under the police power authorities, under Mr. Avant's interpretation, as I understood it, we are already arguing the merits or demerits of Section 16 and I think those arguments should be put off until we arrive at Section 16, so that they can be argued in the light of that particular section as drafted.

If we would carry Mr. Avant's explanation, as I understood it, to its fullest extent, we would do what the legislature has done on many other occasions. For instance, in passing police and fire legislation affecting the city of New Orleans. That legislation has been so detrimental that at this time it is my...on the information which I have, the city of New Orleans must appropriate as much as three million, four hundred thousand dollars in order to merely pay present retirement benefits for fire and police. Those type of restrictions or responsibilities, financial responsibilities, have been placed upon the people of the city of New Orleans. If we had to make those retirement funds actuarially sound at this time, it is my understanding that the people of the city of New Orleans owe as much as one hundred million dollars to make those retirement funds actuarially sound. I think we should be awfully cautious and awfully careful about what we are doing here. I do not know the full extent of Paragraph (B) in Amendment No. 2. I must confess I don't fully understand the implications of it. I would suggest that any arguments be forestalled until we arrive at Section 16.

I don't think there are many delegates here that fit that police and fire are entitled to. From my experience in the legislature, the legislature is used to...the police and fire...and the...of the...type of...power.

that they must participate in.

But let's leave that to the legislature in the future to take care of those problems. I think that responsible local government and home rule charters will properly provide for those spheres.

Mr. Tapper: I think that's about right, except for additional words?

Mr. Denberry: I'm inclined to think that the purpose of Mr. Avant's amendment is very similar to the purpose of mine. We had discussed this several days ago, together.

Mr. Tapper: Yes, sir. Now, the meaning of my question is this. Assuming that the local governing bodies decide to exercise the police power...the state police power, could they not then say that the state has no further power because the constitution has given us the right to exercise it? We are exercising it; therefore, the state legislature does not have the right to exercise any more.

Mr. Denberry: Not so long, Mr. Tapper, as you have language such as I have suggested, which says "nothing in this article shall restrict the police power of the state."

Further Discussion

Mr. Anzalone: Mr. Chairman and ladies and gentlemen of the convention, how many times have we heard that we are here to write a clear, concise, well-defined constitution that is going to be readily understandable by the electorate to whom we are going to present it? I want to give you a little conversation that I had in March of 1974. I walked up to several of my constituents and I said, "I am here to tell you the new constitution."

They said, "Well, Joe, what's in there about home rule?"

I said, "Well," I said, "We gave it to them in seven and eight and nine, but we might have taken it away from them in eleven or possibly twelve. I just was damned if I know what we did."

So then he walks along and he says, "Well, Joe," he says, "what did you all do about the salaries of the firemen and the policemen?"

"Well," I said, "you know that came up in Section 16. But I believe that there was something in Section 11, or Section 3, or might have been seven, that possibly gives the legislature the authority to do what it is that we don't want them to do...or some of us didn't want them to do." So I look at him and I say, "You know, I just be damned if I know what we did." So then I look at him and I say, "Now, I've really explained this constitution to you. Boy, I've told you exactly what it is. I did just exactly what I told you. I was going to do November, was a year ago. 'I'm going to write you a clear, concise, readily understandable constitution.' Now that I've explained it to you, won't you please vote for it?"

You know what he's going to tell me? "I'll be damned if I will."

If we are going to talk about firemen and policemen, let's talk about firemen and policemen in Section 16. Don't try to hide it in Section 4, 2, 9, or someplace else. That's the damn trouble that's wrong with the United States Constitution now.

Everybody talks about how short it is and how great it is, but you get hung up every time you talk about it. Because you don't know what really provides for what. Now that one's been in existence for almost...

one next year. Now you all try to go out...it when somebody asks you. "What does it mean?"

"Well, I don't rightly know."

"Well, what does that mean?"

"Well, I don't rightly know that, either."

"Well, how about this other provision?"

"Well, I don't rightly know that, either."

"Oh, I made about six thousand dollars at the convention."

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Ladies and gentlemen, please understand. This is not legislation. We're not trying here to play tricks on one another to see where we can hide it and where we can put it, and then later on we can find another little loophole to work out of. You've got to go back to the people with this thing. If they don't understand it, they're not going to vote for it. We don't understand it. How in the world are we going to tell them what it is? You've got to reject amendments like this, not necessarily for the content, but because it is an attempt not only to put something in here that maybe you don't want, but it's a deliberate attempt to hide something. We're not here to hide. That's why we didn't put a curtain on the machine in the first place.

Further Discussion

Mr. Willis Mr. Chairman, fellow delegates, I know the deep pleasure of serving and of hearing and seeing with eyes and ears connected and tied, and not disconnected from the heart, in search of the truth. I know the pain of enduring untruths. Lots of harsh words ring loud in my ears, trouble my mind and burden my heart when they are interwoven with untruths or half-truths. These, however, do not deter my endeavor to untie stubborn knots and untangle every scheme. I do not cut the knots, all snarled up with either wounded pride or bold prejudice. In testimony whereof, I pray you bear with me while I unravel the untruth and lay bare and reveal the truth, the whole truth, and nothing but the truth by exposing and exploding this amendment, then carefully work at it with your heart.

This amendment contains one sentence. It is overloaded and it tumbles with its own weight. Here is that sentence stripped of its ruffles and flourishes: The legislature may throughout the state exercise the police power. The legislature does not exercise. It makes laws. Those laws are exercised by the executives, locally, by sheriffs or chiefs of police, and statewide, by the state police. Authority is the oldest means of persuasion known to man. When it is used wrongfully, it overcomes, but does not convince, and it overcomes only temporarily, which means uselessly. All it does is cause unrest and injustice. This amendment supports the sheriffs, the chiefs of police, by the state police if the legislature does exercise. Maybe under this amendment the legislature could exercise the police power through its own members. Do you think...did you think of that? That's what the amendment allows. It does so in plain English. Would you have it...would we have the Republic guaranteed to us by the United States Constitution in that case?

Mr. Denney's amendment takes care of what troubles this section. There is no trick to good faith. This amendment obliterates what we have done thus far and preempts what we are later to consider. I make bold to say it confuses to convince, it refuses to divide, it suffices for suicide. Give it the resounding repudiation, rejection, refusal, and resentment it so richly deserves.

Thank you, Mr. Chairman.

Further Discussion

Mr. E.J. Landry Mr. Chairman, ladies and gentlemen of this convention. Everybody is singing, so I'm going to sing. "I got a robe, you got a robe, all God's children got a robe. When they get to Heaven gonna put on the robe, gonna walk all over God's Heaven...Heaven...everybody talk about Heaven, ain't going there...Heaven..." Now, the idea...the idea is to get your attention. Thank you and you should give it to me because anytime anybody will really sing for this convention, you should listen. Ladies and gentlemen, this convention, regardless of what you say in your pessimism, is a lovely and great experience. I tell you I enjoy so much hearing my good friend, Delegate Willis. If anyone ever had the command of the English language and the legal language and the beautiful language, he has, but I'm here at this moment to speak to you about a concept of government. Now,

you have got to reason with me that this amendment really and truly is necessary. It protects local government against itself. That's exactly what it does. We need a broad concept of government. Most of you have been in management, in personnel, and you know as well as I do, ---and I have been in that area, that responsibility---state cannot delegate responsibility. It must never relinquish responsibility. It can delegate authority, but it cannot and must not delegate responsibility. Now, think well about this thing. You have had all kinds of side issues develop, bringing in things that are not even present. The title of this section is "Limitation of Local Government." Now, reread it. It's limitation and members of this convention, you need to limit local government. Like it or not---make no special provisions for any special part of this state. Vote independently, regardless of what has happened in the past. You are trying to write a simple paragraph that will do just what I've talked to you about. I'm not a lawyer; I can only give you an expression of opinion. I will not in...try in any manner, shape or form to answer any legal questions coming from the lawyers because I have listened too long to the words used by lawyers in this convention to try and cope with any of their language.

[Previous question asked. Motion made to adjourn the present and a question.]

Closing

Mr. Avant Mr. Chairman and fellow delegates, this is a moment of decision, a moment such as we haven't reached before. The issue is simple: Do you want to continue to live in a sovereign state,---one of fifty in this Union---or do you want to live and your grandchildren and children to live under a loose confederation and alliance of independent, autonomous local governmental units? That's the question. Mr. Chairman, I ask for a record vote on this amendment.

[Second vote taken. Amendments adopted: 61-48. Motion to reconsider failed. Motion to take up other matters adopted without objection.]

Announcements

[1. Training, 10:20-11:00]

[Adjournment to 10:00-11:00 p.m., Thursday, September 27, 1973.]

ROLL CALL

Mr. Chairman, fellow delegates, on the deliberations of this convention today. May we toil conscientiously putting devotion to duty before our own inclination. May we labor with thankfulness and joy. May we work with order, peace, moderation, and patience. Above all, may we work with a pure intention, and with detachment from one's self, having always before our eyes the hour of death and the accounting which we must render of time ill-spent, of talents unemployed, of good undone, and of our empty pride and success, which is so fatal to the work of God.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mr. Lennox Mr. Chairman, fellow delegates, on September 7, I mounted this podium to speak to you on personal privilege, as I felt at that time that I had been severely aggrieved. Regretfully, and most unhappily, I am provoked to appear before you again to advise you that my prior oratory on the subject of cane sugar was apparently not heard or digested in the proper quarters. We are arranged to suffer at this convention as we are forced to use beet sugar grown in the northwest and refined in Illinois to sweeten coffee on the convention floor, while a much superior product is available to us right here at home. Because I failed to succeed in bringing to each of you one of the better things of life available in Louisiana, I have arranged to place at the desk of each delegate a parcel containing quality products refined by Godchaux-Henderson Sugar Company division of Southern Industries Corporation, using Louisiana cane, capital, and labor, all of which contributes substantially to the general welfare of our state. This parcel is delivered to each delegate with the compliance of the employees of Southern Industries and Godchaux-Henderson Sugar Company. I am happy to report to you at this moment that you no longer will find it necessary to sweeten your coffee with an inferior product, and that you now have available to you an abundant supply of that delicacy known as Louisiana cane sugar. As it touches the lives of at least two of us on this convention floor, it ain't sugar at all; it's bread and butter. Now if you'll permit me for a few moments to speak to you on a more serious matter, I'd like to speak to you, however briefly, relative to the Public Affairs Research Council of Louisiana. On August 7, PAR published a convention documentary entitled "Is Your Delegate Voting?" This publication followed repeated complaints from the Chair regarding the poor attendance of delegates at convention sessions. The glare of public scrutiny was brought to bear on the attendance records of at least four of my closest and most valued friends. The reaction of the convention following the publication of this documentary was such to provoke one of our leading daily newspapers to refer to that date in history as "Black Wednesday at the position taken by PAR, past, present, and future."

PAR is not an advisor to government, to legislators, to judges, to the executive branch, to the judicial branch, and to virtually every level of local government in our state. I have not personally agreed with each and every one of you, but no one can deny that each and every one of us has a right to be heard, and what's more important--with the public. If you

doubt that, then you'd better check the influence PAR has had on constitutional amendments over the past twenty years. Several members of the PAR staff are already on a speech circuit throughout Louisiana talking about the Constitutional Convention, its status and its problems. They happen to be about the only voice not directly associated with the convention that is making positive statements about the work of the convention. At this moment, PAR is the only disinterested voice that is really doing much to dispel the negative attitudes towards the convention accomplishments, and I submit to you that PAR will continue to be a vital force in the acceptance or rejection of our work when it is ultimately submitted to the voters for their approval. I make no attempt here in defense of Mr. Edward Stimpert as I consider him fully capable of defending himself. As regards PAR documentary, "Is Your Delegate Voting," it speaks for itself. I have delayed making those statements until this moment because I felt it inappropriate to contribute further to the emotionalism which existed on the floor of the convention on August 8 and immediately thereafter. After sober reflection I acknowledge there are few of you who would condemn the staff of PAR for performing their duty to the citizens of the State of Louisiana as they saw it. If, however, there are still some who question the motives or methods of the PAR staff on this or other issues, I would like to conclude by reminding you of a quotation attributed to the Apostle James during the time of Christ: "To him that knoweth to do good and doeth it not, to him it is a sin." Then in the twelfth century Dante, the illustrious Florentine poet, said, "The hottest places in hell are reserved for those who, in a period of moral crisis, maintain their neutrality." Six hundred years later the great British statesman and political writer, Edmund Burke, observed, "All that is necessary for the triumph of evil is that good men do nothing." In the middle of the last century, Abraham Lincoln said, "To sin by silence when they know they should speak, is to share in the guilt." I am a member of the Public Affairs Research Council of Louisiana and I'm damned proud of it. Thank you for your time.

Mr. Henry Thank you, Mr. Lennox, for the suggestion for the comments too, but particularly for the sugar. We can talk with you anytime, but you don't always give us something nice.

Reverend Alexander, on personal privilege, and, Reverend, I apologize for not recognizing you yesterday. This is the first time I've thought about

Personal Privilege

Mr. Alexander Thank you, Mr. Chairman. I did ask for this privilege yesterday. About a month ago, as you heard read from the podium, I proposed to the convention that we alter our rules relative to the time that an amendment would have to be considered. Now, at the time I proposed that an amendment be restricted to debate of one half hour to be divided equally between proponents and opponents, I did that on the basis of the fact that, at that time, I calculated that the convention had been in session for a long time. I think it's now about fifty-seven days, at least fifty or more days, which means that if the convention meets all the days that have been allocated by the Executive Committee, we would only meet another fifty-five or sixty days at the most. We have only completed three sections, four sections rather, and we have not actually completed the respective committees still have to submit.

Incidentally, this amendment would allow us to continue at this rate, and we would have to debate each amendment for one hour, which at times runs into hours, and if we do that, then we're not going to complete the convention. I would like to ask for an extension of time, we're going to

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need more money, or we're just going to fail and we're going to be up there. So, Mr. Chairman, what I ask for is what the status of that resolution now, and if possible, that that resolution can be called from the calendar by this convention and considered at this time?

Mr. Henry Reverend Alexander, we'll find out what the posture of that is. I don't know, but we'll find out and I'll report back to you.

Mr. Alexander Tomorrow we'll...

Mr. Henry We can let you know by tomorrow. Certainly, we need to move as rapidly as we can, and I think any rules we want to adopt, find, well, and good, but I think if we just use some individual restraint on ourselves and don't talk when it's not necessary, and sort of discourage those who do like to talk so much, I think we'll speed up the progress of our work.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposals No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee.

A proposal making for general provisions for local and parochial government, levee districts, and ports, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal, at this juncture, is that the convention has adopted, as amended. Sections 1 through 11 of the proposal, with the exceptions of the following sections which have been deleted, those being Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 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997, 998, 999, 1000.

Reading of the Section as amended

Mr. Poynter "Section 12. Limitations of Local Governmental Subdivisions.

Section 12. (A) Local governmental subdivisions shall not: (1) incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred; (2) define and provide for the punishment of a felony; or (3) "...insert the language "except as may be provided by law enact private or civil ordinances governing civil relationships." Also added is a paragraph:

"(8) Notwithstanding any provision of any plan of local government or any home rule charter, or any other provision of this article, the legislature may by general law, applicable throughout the state or based upon any reasonable classification, exercise the police power of the state in the parishes, municipalities, and other local governmental subdivisions of the state."

Amendments

Mr. Poynter Amendments sent up by Delegates Lowe, Roemer, and Mire.

Amendment No. 1, on page 6, line 27, immediately after the word and punctuation "not" delete the remainder of the line and delete line 28 in its entirety and delete line 29 in its entirety and insert in lieu thereof the following: "(1) The debt."

It would reinsert as a (1) the de-so that it would pick up on line 30, "define and provide."

Amendment No. 2, on page 6, line 30, immediately after the word "or" and before the word "enact" change the number "(3)" to the number "(2)".

Explanation

Mr. Lowe Mr. Chairman and fellow delegates, the amendment was handed out yesterday. I believe if you look on page 6 of CP No. 17, you can understand the amendment without too much trouble. Under Section 12, there are three prohibitions and what this amendment does is merely to delete prohibition num-

ber one. Prohibition number one says that a subdivision shall not incur debt payable from ad valorem tax receipts maturing more than forty years from the time it is incurred. Now, according to the explanation that was given to us by Mr. Perez in this digest, there's no such provision in the 1921 Constitution. We talked about this some under revenue, finance, and taxation. Section 40 (A) of this same proposal places a limitation on bonded debt of ten percent of the total value of all property within in such subdivision valued for assessment purposes, and this ten percent limitation seems adequate to control the debt of municipalities and local subdivisions. Often local government finds it necessary to refund bonds. You may have a bond running for thirty years and for some reason or another the call features in the bond may make it have less cost, interest-wise, to refund those bonds and include it with another issue to run thirty years. I would doubt that that could be done under a proposal where there was a limit of an original debt of forty years. As you know, it's bad to put numbers in the constitution. When we were returning from the wars in 1946, it was not uncommon of a home... a residence to be purchased and paid off over a twenty year period, and that was the limit at which you would pay off a home in those days. Today it's not uncommon for young people to go out and buy a home that's payable over thirty and thirty-five years, so what we'll have fifty years from now. I don't know. But, the point is that this limitation, I don't believe, is required. The ten percent limitation in Section 40 (A) is adequate to control and place limits on local government.

Question

Mr. Roemer Mr. Lowe, isn't really all you're trying to do is just eliminate some unneeded language in this constitution, since we have the ten percent limitation that's the real protection, not the length of the bond?

Mr. Lowe That's exactly it, Mr. Roemer, and this amendment does nothing more, and as we huddled up here, I understood from Mr. Perez that he didn't have any serious objections, or maybe has no objections. I ask that you adopt the amendment.

Further Discussion

Mr. Perez Mr. Chairman and delegates, the reason this provision was put in the Local Government Article is because of the fact that many times in Article XIV, Section 14, when dealing with the specifics of the issuance of bonds, there was a limitation of forty years. The committee has no strong feeling with respect to it. We recognize that the State Bond Commission has to approve the issuance of bonds, and we have no strong objection to the deletion of it if that's the pleasure of the convention.

[Amendments adopted without discussion.]

Amendments

Mr. Poynter Amendments sent up by Delegate Casey as follows:

Amendment No. 1. Delete in their entirety Amendment No. 1 and Amendment No. 2 proposed by Mr. Avant, et al, and adopted by this convention on September 26, 1973.

Amendment No. 2. On page 6, line 27, immediately after the numeral and punctuation "12," insert the letter "(A)"

Amendment No. 3. On page 6, between lines 31 and 32, insert the following: "(B) Notwithstanding any provision of this Constitution, the police power of the state shall never be abridged."

Explanation

Mr. Casey Mr. Chairman, and delegates, as you know we yesterday adopted the Avant amendment which struck very seriously at the heart, the soul, and the guts of our argument on home rule, so very

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tion of the police power, is it--rather an abrogation of sovereignty, isn't it?

Mr. Casey Woody, I think that's a matter of interpretation. I think, personally, I think the state was still well protected under, I think, Section 8, Paragraph E, where it indicated that the legislature could deny really any of the police powers to local government that it wanted to. I find no problem at all.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I think we ought to put the issue as clear as possible, and I think Mr. Casey has done an admirable, and excellent, and lucid job. The Avant amendment destroys what we did in Sections 7, 8, and 9. Some of the people who voted for the Avant amendment got caught up in the firemen and policemen problem. Some of the people who have been consistently for strong and viable home rule got caught up in that problem because it was intertwined and intermingled into the very ambiguous broad and dangerous language of the Avant amendment, and so they voted for it. That issue should be discussed when we get to Section 16. That issue should be isolated and separated from the broad issue of home rule. It should not be muddled up in this bad amendment that we've adopted, and that's why I'm suggesting we should adopt the Casey amendment. If what everybody is interested in is really the preservation of the police power, that's precisely what the Casey amendment says. It's very similar to the language in the '21 Constitution, and I think it's quite clear that everybody here who knows the legislature can deny local government just about anything if it has a specific law denying it. But 7, 8, and 9 vests local government with certain powers, some of which would be police powers. Now we have given, and now we have taken away. It is totally ludicrous, and totally evasive, and devious to what we have done: to on the one hand give, and by a very good vote, give the home rule vested with certain powers and then to say they really don't have anything now. They really don't have anything--and that's what it says if it's carefully read. It's not the fireman and policeman issue. It is a total emasculation of what we've done, what we've spent a week doing, and that's what it is. I think if everybody is going to be candid about it, they can say that what it really does is to take it away--what we've given. It's a back door approach; it's not really what we're doing. Yes sir, that's what it is, because it takes away what we previously enacted, and I'll tell you this: who do we represent, or whom do we represent? I guarantee you this is an office of public trust. We're writing organic law. We're writing organic law for the people of Louisiana. We've all used the euphemisms of people; I'm wondering who the people are. The people of this state want home rule. The vested interests do not want home rule, and we're supposed to represent the people of the state, and that this amendment is, is to placate vested interests. The Avant amendment placates it, not the people, not the man on the street who elects you, who elects the governor. That's the man who elects you. I think everybody ought to start thinking about that, and who elected you to come up here. Those people want home rule, and it's been taken away by this amendment. The Casey amendment preserves the police power and does not destroy what we have done. I suggest to you that this convention looks pretty ludicrous when it argues for a week and establishes a sound principle and then by vague, ambiguous, devious, evasive, and obfuscatory language takes away what we have already done. I ask you to adopt the Casey amendment--to not yield except to your own conscience. That's what I ask you to do.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates to the convention, I know that every delegate in my audience is representing you, I have been in every session of the

word, an advocate of one polar position of political philosophy in this convention, and that is the philosophy that believes first and foremost that government closest to the people is the best, and that the best way to protect liberty is to decentralize government power. That philosophy is not as concerned with the designation of rights in the Bill of Rights as it is with the dispersal of government power. That philosophy sees the concentration of government power as the greatest danger to liberty.

Now I recognize that certainly there is another philosophical position which looks upon the central government as the guardian, not only of the basic constitutional rights of the people, but of the social and economic rights of the people. I do not say that this is an invalid position at all times and all places, although in this convention, I have spoken always on the other side. But I'm asking you for a moment to divorce your thoughts, if you will, from whatever of these two political philosophies, or any philosophy in between, you might espouse. Look, if you will, to the practical effect of the amendment that we adopted yesterday in the language that we used. That language says that the legislature may by general law, applicable throughout the state, or based upon any reasonable classification, exercise the police power of the state in the parishes, municipalities, and other local governmental subdivisions in the parishes, and in the municipalities, and it may exercise it. I submit to you that that language is so broad sweeping, and so unlimited, that it clearly presents not only the possibilities raised by Mr. Casey, but the possibility that the state would not only set firemen's and policemen's salaries, but the salaries of the garbage man and the janitor who cleans up in the city hall, and carried to its ultimate extreme, would permit the state legislature as I see it, if they so desired, to virtually take over local self-government.

Now you go to what the state legislature won't do right now and the governor we have right now wouldn't do that. I would agree with you. But language that establishes power is a neutral thing and the power, once established, is there for all time to come and it is not there just for the present governor, it is not there just for the present legislature, but for whoever will come in the future. If we look to the political history of our state, we would be naïve, indeed, to deny the fact that there have been incumbents of the governor's office, and there have been some people in the state legislature in times past, who would have used this power in exactly the way that we fear it could be used. I submit to you that that is too dangerous a possibility to leave in this constitution.

Mr. Casey's language is virtually the same language that was contained in my amendment which was taken verbatim from the present constitution. It has a well defined historical meaning. We know in the past in our political history which of the police powers have been delegated to the municipalities and to the parishes, and which have been reserved by the states. It seems to me that we ought to be very careful, indeed, before we adopt new language, undefined, that is so broad sweeping that it would easily be open to the interpretation of an all encompassing central power.

Further Discussion

Mr. Avant Mr. Chairman, fellow delegates, particularly Mr. Casey. Mr. Casey, I don't take things personally and I know you well enough to know that you don't engage in personal debate. We're here to discuss principles. So have no fear. I don't think that the day will ever come when I will have to be afraid of you on that point.

I do want to say this. I think Mr. Casey made my point very eloquently. Mr. Casey concedes that he thinks the committee, maybe, went a little bit too far. Well, I'm going to put the interpretation on what the committee has done to that I put on yesterday. The committee has turned the world upside down insofar as this area is concerned. Now

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said the cities are creatures of the legislature, and the Fordham Rule was that the people of the cities are the master of their own fate?

Do you remember the debate and the vote on the Avant amendment yesterday, where by a vote of sixty-one to forty-eight, you voted to reverse all of the votes you cast on this subject last week? Today, by a change of seven votes, you can replace what we did last week. For that reason, I urge these delegates who voted all last week on the Fordham type of city government, will now vote for the Casey amendment.

Further Discussion

Mr. Kilbourne Mr. Chairman, fellow delegates, I hesitate to come up here on this debate because I really don't feel that I know what I'm talking about. But after I've listened to everybody else talk, and I feel maybe they don't know more than I do, so I have a little more confidence.

I feel a little bit like I did several years ago right in my own woods, near my own home, but it was on a cloudy, overcast day, I couldn't see the sun, and I got lost. I wandered and I wandered. Every time I'd think I was getting out, I'd find I'd go right back where I'd started. I was going in a circle. That's an easy thing to do. I feel like maybe that's what we are doing now. But I told Mr. Avant yesterday that I couldn't vote for his amendment because I thought it was too broad.

Now I don't know what they talk about when they talk about police power. When they say, "reasonable, any reasonable classification, the exercise of police power in the state, in the parish, in the municipality is based on any reasonable classification." What's a reasonable classification? Well, I guess it's just what the people who happen to be holding the reins of power at a particular time think is reasonable. Or the judges who happen to be judges at a particular time rule is reasonable. That's the only thing I can make out of it. What is police power? I don't know what police power really means, and it's too broad so I just— I wish Will Rogers was here sometime, because he was a man that could take the complicated things and put them in simple language that I could understand.

What I think police power is, just to be real simplistic, is what the government, or the people who hold the reins of government at a particular time do to you, or for you, for your own good, whether you like it or not. I think this, that what we adopted yesterday, I still think it went too far. I think it's far too broad. It's too vague, and nobody, I'd say nobody here can foresee what the outcome, or how that kind of language could be interpreted in the future. For that reason, well, I don't know what the answer is, but I don't say Mr. Casey's amendment is the answer, but I believe there's got to be a better answer than what we did yesterday. So, I hope for the time being, that we can vote for Mr. Casey's amendment and maybe, maybe, we can come up with something still better than that. But I really believe that Mr. Avant's amendment goes too far.

Anybody can ask me questions, but I've already told you I didn't know anything about what we are talking about, and I don't think I can answer them, but I'll try.

Question

Mr. Derbes Mr. Kilbourne, I agree with what you say, and I'd just like to ask you this question.

Isn't it true that any legislative act, any act of the state legislature pursuant to the Avant amendment, under the established rule of law, would be presumed constitutional, and it would be up to anyone challenging that law to establish its lack of constitutionality? If that were not established by proper evidence, the presumption of constitutionality would carry.

Mr. Kilbourne Well, Mr. Derbes, that's a very simple rule, a Horn Book law, of which even I know. Every legislative act is presumed to be constitu-

tional. You are absolutely correct.

Further Discussion

Mr. Kean Mr. Chairman, fellow delegates, I rise in support of the Casey amendment, and I'd like to take a few minutes to tell you why. I know what the Avant amendment does to East Baton Rouge, I know what it does to Jefferson, I know what it does to Orleans and the other home rule charters that exist in this state.

In the case of East Baton Rouge following the enactment of Section 11, it completes the emasculation of the charter of East Baton Rouge Parish. What I don't know is how far-reaching this particular section would be, if enacted with the Avant's amendments in it, so far as other governmental offices and units are concerned. For example, and I think this is a matter which ought to be of some importance, for example, to you elected assessors, you other elected local public officials who are sitting in this convention. The Local Government Committee put in Section 13 a provision which, in my opinion, is inherent. It is necessary, if local government is to have any viability in this state, and that is the electors of each governmental subdivision shall have the exclusive right to elect the members of their governing authority, and to further provide that such officials shall not be subject to removal by the legislature.

Now as I appreciate Mr. Avant's amendment, which says "anything in this constitution notwithstanding,"...anything in this constitution notwithstanding that the legislature could decide whatever is necessary in the exercise of the police power to classify all municipalities over two hundred and fifty thousand, and to take the position that the elected public officials of that particular...those particular municipalities shall be terminated. Is that what you want? Is that what this section means? Read Mr. Avant's amendment and then read Section 13 and decide for yourself if this particular provision by Mr. Avant wouldn't provide the means by which we could strike down, destroy, do away with local government in this state. Is that simple device of violating the election of local officers who have been elected by the people for whom they serve.

I can't believe that the delegates of this convention want that to be the law of this state. I know the people of this state don't want it to be the law of this state. This provision in Section 13 has been in the constitution for many years, put there for a very principal purpose, for a very precise purpose, to keep the legislature from doing what was done back in the early forties, and that is to take away from local government its own elected local officials. I say to you, by all means take a look at the broad expanse of Mr. Avant's amendment. Give consideration to what it does striking across all of the provisions of this article to such an extent that nothing is left. As I said in the beginning, I know what it does to Baton Rouge. It emasculates the Baton Rouge plan of government. It does it even more effectively than Section 11 ever could have hoped to have done. I am prepared to fight that battle as it comes.

But I urge on you delegates who now, for the first time, have to decide what this amendment by Mr. Avant does to the rest of the state and the rest of the local government; you'd better take a good, close look at it and vote in favor of Mr. Casey's amendment, which is a sensible and reasonable approach to this problem.

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, I'm utterly amazed that my good friend, Tom Casey, could suggest to you delegates who sat here yesterday and heard many hours of debate, who were politicked on the floor of this convention, hear him say that nobody knew what was happening. I think that just as clearly as it could possibly be put, that there was presented to this convention on yesterday, there is being represented

Or not you are going to have the ruling power over the people reposed within the mayors and police juries of this state, or whether you are going to repose that power...I will not yield...in the legislature, the elected representatives of the people, the elected representatives chosen to represent the accountable. That is the precise issue. I wonder if you will recall that when Mr. Casey was talking to you, he spoke grandiosely about the concept of delegated powers, delegated powers. There's nothing in this proposal up to date unless we maintain the Avant amendment which was proposed by the legislature. The Avant amendment states that there will be the concept of delegation of powers by the legislature to local governing authorities. On the contrary, if you adopt the proposal suggested today and go along, in effect, with the committee, which is what you would be doing, you would be limiting the police juries to the extent of the powers of Louisiana. You would be limiting the right of the people of this state, through their elected representatives, to provide for the general welfare, morals and betterment of all of the people in this state. All that the Avant amendment did yesterday and it is strange to me that the committee can't see this, is to provide that no part of a home rule charter, no provision in a plan of government, can adversely affect all of the people in the state and that the legislature may pass laws irrespective of anything that may have been slipped into some local plan of government. So that the charter which is adopted that the full rights of all of the people throughout the state are protected.

If you do not maintain the position that you securely adopted yesterday by a resounding vote, then you are going to permit literally, literally hundreds of small governmental operations to coexist without any uniformity throughout the length and breadth of Louisiana. Ladies and gentlemen of this convention, this is the issue. The issue is, whether we, as New Orleans or any other area, be concerned and worried about the police power of the state, exercised as authorized by this amendment, if the provisions of their charter or the provisions of their plan of government, are only for local and special purposes? The Avant amendment would not affect that. The Avant amendment only permits the exercise of legislative authority by the Legislature, your Representatives, and by your Senators, when the police power of the entire state is being invoked, and then only for the public good.

I think everybody understands the issue. Sixty-one to forty-eight you voted yesterday, and when you got through voting, the same power play descended upon you as has descended upon us on previous occasions.

what about by the people? Do we trust them to handle their own affairs? Legislature will handle the state affairs and we have protected the state police power. But yet, we seem to refuse to let people handle their own local affairs.

The people of your respective districts chose you to represent them. When they elected you, they let you know that they trust you, but yet now we are turning around and telling the people of our districts that you don't care for them in your own affairs." Ladies and gentlemen, you either give to the people the trust and the authority that they deserve on the local level, or you're not for home rule. I strongly urge you to support the amendment. As stated earlier by previous speakers, the Avamt amendment destroys the work that has been done these last weeks here at the convention. I ask you, and urge you, to give the people the power they deserve and the trust that they have given you. Thank you.

Mr. Roy. Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the amendment. I want to just say a couple of things about what I think we've done in the last week or ten days, contrary to what some of my distinguished friends think.

I think for the first time in the history of this state, we provided a vehicle, a constitutional vehicle whereby police juries, local municipalities and any other governmental subdivision may facilitate the adoption of a home rule charter. We constitutionalized those that are in existence under the old provision in Section 13, and in the future you may have others. I never believed, though, that we were in any way attempting to abrogate, modify or amend the police power of the state in any circumstance, and never will believe that. I ask one thing, was why didn't the committee really, truly, when it gave these powers to the local governments, and to the people, which they should have done, the home rule charters in the constitution, and when it said contrary to everything in the past that we are going to give you every power that is not expressly denied to you in the future, that was a change that everybody has agreed, from a hundred and fifty years of government in the past, why, then, why not the same little one line sentence that existed in the 1921 Constitution that said, "the police power of the state shall not be impaired?" Shouldn't we understand that they are giving absolute, autocratic power to local citizens to form a home rule charter subdivision, and yet they didn't bother to say anything about the police power of the state. Now, I'm not trying to say there was anything sinister. That's not my point. My point, as a legal matter, though, is that since they have so broadly said that every home rule charter subdivision has the same powers as the state, they have denied. Since there are so many charters that have powers that we don't know about, that we can't think the Casey amendment is, the amendment, is much too weak, that the argument made, and surely it will be made by these autocratic people of home rule cities, is that it is and it's not the people. It's the people who are the ones pushing for this thing. You don't

[illegible]

Miss Perkins Ladies and gentlemen, those of you
 that were in New Orleans some time ago when the con-
 vention first convened and we had a conference with
 one of the...the Chief Justice of the Louisiana Su-
 preme Court, some of you probably heard me ask the
 arbed wire fence? It protects the property without
 obstructing the view. Now exactly how does this
 apply to home rule?

[illegible]

to retain the right for these general laws, and for the general protection of people of this state.

Another thing, you talk about the health conditions of this state. You can't permit, you can't permit a police jury, or even in the same parish next to a city, or even in another parish, create a subdivision and let them have the standards of an oxidation pond that's not functioning properly... that's not functioning properly, and they would create a health hazard to the people in another local government. There has to be an overriding, and retained by the state, the right to protect the health of the people of this state. That's all this is. Now the thing is, we have a good amendment that was adopted yesterday, and I think we should retain it as it is. It states the police power in a positive manner. To properly protect the people of this state, it needs to be stated in a positive manner.

So, I'm going to ask you to reject Mr. Casey's amendment.

Thank you.

Further Discussion

Mr. Hunez Mr. Chairman and fellow delegates, it's very difficult to say what hasn't been said because I think it's all been said. It hasn't all been said today. It's been said for the last two weeks, and if we don't adopt the Casey amendment, what's been said for the last two weeks, and what's been adopted for the last two weeks will go for practically nil.

You know, there's been a lot of talk about slowing down the convention, and why the convention is slowed down. Well, certainly, you know, coming back after you have adopted Section 7 which ratified existing charters, Section 8 which gave the constitutional vehicles to local governing authorities to adopt the home rule charter, and Section 9 which... which, by the way was, I thought, a real compromise, and I came here yesterday morning as optimistic as I've been since we started this convention, that we have been doing a good job, and eventually, the ultimate product of this convention was going to be a good product and the people of the state can vote for it.

But after we adopted and made the compromise, and put the referendum to the people--that was the big cry from a lot of people, you know, they wanted the people to vote for it--they came back in Section 12, which was "limitations of powers," and in "limitations of powers" what they did is almost undo anything you had done for a week and a half. Let me say to the firemen and policemen who are here, I don't think you've had a better friend in the past ten years I've been in the legislature. I haven't missed a vote for you. I don't think this is a vote for you, by the way. I think it's a vote to torpedo what we've done over the past two years, or past two weeks.

Section 16 covers the firemen and policemen adequately. If you want to vote to protect the firemen and policemen of this state, which I will do, vote for Section 16... vote for Section 16. But don't be fooled by... it's in Section 12... like a lot of people, I believe, still believe that they are voting for firemen and policemen. It's completely untrue. You are not voting to protect firemen and policemen. Section 16 will do that. I say up here publicly, maybe it's a bad vote, but I'll vote for Section 16. I believe that I have in this Casey amendment, what people have gotten up here and told you they wanted... not to abridge the police powers of the state. That's exactly what it does, very simply. It prohibits the abridgement of the police powers of the state by anybody. Now haven't you heard that a hundred times up here... that they don't want to give the local governing authorities the police powers that are delegated to the state? Well, this does it. This does it. What does the Avant amendment do? Not to be repetitious, but I think it just guts the present home rule charters. It guts the present Provision 9, and I think it goes a lot further than that. It goes into any constitutional provision such as your ports and your levee dis-

tricts and your other constitutional provisions as long as it's reasonable... as long as it's reasonable. What is that? That's one sentence in there I just can't seem to grasp... reasonabilities. Is that all parishes east of the Mississippi River, is that reasonable? All parishes above five hundred thousand; all parishes on the coast of Louisiana; all parishes that have fifty percent pine trees; is that reasonable legislation? Certainly it's reasonable. I think Mr. Casey has come up with an excellent amendment. I think his arguments for it are certainly prudent. His research last night, I think, is outstanding and far outdoes anything anybody has done so far. I think this is another compromise. I believe that if we adopt this amendment, we are on our way back to having a sane... sane and sensible, and something that we can sell to the public of this state, and to the local governing authorities of the state.

So, I would ask you to adopt the Casey amendment. I would ask you to adopt it in the sense that it doesn't do violence to local government, and certainly it keeps the police powers to the state. It spells it out very simply. So, let's adopt the Casey amendment and move on with the convention because, I would say, at this point, we have slowed down to a snail's pace, and I would say at this point that if we don't pick it up, we might get into some serious trouble.

Thank you.

[Previous Question Ordered.]

Closing

Mr. Casey Mr. Chairman and delegates, I don't pretend to hope to sway anybody at this late moment. I merely wish to furnish some additional information.

In reading the law books last night, I think it might be interesting to forward to you, some of the material which I read last night just by repeating some information. In speaking of the police powers of the state, Corpus Juris Secundum says that it extends to all matters which concern the regulation and control of the internal affairs of the state", and listen to this part, "and almost the whole of the great body of municipal law"... "the whole of the great body of municipal law which establishes and defines the duties of citizens to each other is embraced within the police power." Police power affects everything. I have a list of about two hundred things, animals, slaughtering animals, breach of the peace, building and zoning laws, service stations, bookmaking, brickyards, butchers, carpet cleaning, curfew, dairies, dancing, fences, fire regulations, lewdness, laundries, lifeguards, you name it, and that's the police power of the state.

Gentlemen and ladies, I think you should consider seriously what the Avant amendment has done to the future of home rule government. Now I told "Sixty" Rayburn this morning, I don't know if "Sixty" is around, he knows that the city of New Orleans is always thinking about one of these days we hope we could have some of that clean, good, cool St. Tammany and Washington Parish water. Now, if this, if the Avant amendment stays in effect, that would, in effect, permit the state legislature, by general law, to pass some type of law whereby the city of New Orleans might, maybe, perhaps, one day, would be able to take water from St. Tammany or Washington Parish and use it to the benefit of the city of New Orleans unless the right were given to the parishes of Washington and St. Tammany, by local ordinance, to prohibit the removal of water from their parishes.

Also, the legislature, as you know, is becoming more urban-oriented. It's certainly possible, that through a large representation from urban representatives, that possibly legislation could be passed which might be detrimental to the rural areas of the State of Louisiana whereby, however, through police juries' ordinances, the local interest, agricultural interest, might be better protected through local ordinances. I would like to point out very

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...ly that because of the Avant amendment, we have gone farther, much farther, in diminishing home rule than we were under the Constitution. We are worse off than we were under the Constitution. We are worse off than we were under the Avant amendment than we were under the 1921 Constitution, and certainly we are worse off than we were under the committee proposal. We have three choices when you get down to it. This is what we really ought to seriously consider these three choices. Do we want the committee proposal which is one extreme; do we want the Avant amendment which is the other extreme; or is it possible, perhaps, may be, that during the debate in the consideration of this article we might give to the electorate those things that are due rightfully for regulation, to regulate and give to municipalities those police powers which it rightfully should enjoy to conduct its own business? That's the whole issue. You can't do that with the existence of the Avant amendment.

Amendment

Mr. Frynter: I move that Mr. Jenkins, On page 6, line 11, at the end of the line change the period "." to a semicolon ";" and insert the following: "or (3) levy any tax beyond the limits imposed by this constitution; or (4) levy a tax not specifically authorized by this constitution unless authorized by the legislature and by a majority of the electors voting thereon in the political subdivision affected."

All right now, Mr. Jenkins has a further change with respect in the amendment to item No. 4, the amendment as he wishes it introduced would read: "or (3) levy or increase any tax; insert the word 'or increase.' So, it would read "or (4) levy or increase any tax not specifically authorized by the constitution unless authorized by the legislature and by a majority of the electors voting thereon in the political subdivision affected."

Question

Mr. Jenkins: Mr. Chairman, delegates, the proposal of the Local Government Committee very carefully limited the taxing authority of local governmental units, and you will see in the later provisions on finance, in this section, they specifically put limitations on property taxes, special district assessments, sales taxes, etc. However, there is a loophole left in the whole taxation scheme, and that is the possibility that other taxes not specifically mentioned in this article could be imposed by virtue of the fact that local governing authorities have the powers not denied to them by general law. Examples of this would be things like a value-added tax, there is no tax on people employed in the city, which would have to be paid by people in Jefferson or elsewhere. You will notice in Section 9 of the committee proposal there was the listing of certain things that local governments could do. If you will look on page 5 in Section 9, you will see that one of the things that local government could have done was the No. 6 there, "to tax under the limitations provided in this constitution or by general law." The committee thought that was the amendment that the local government... Local Government Committee went along with you remember deleting that entire listing. So, it's now somewhat up in the air whether or not local governing authorities can increase taxes beyond the limits set in this constitution or could impose new taxes not mentioned in the constitution. The committee proposed

to increase taxes authorized in this constitution. So, the purpose of this amendment is to stay in line with that thought; to say that local governmental subdivisions shall not levy any tax beyond the limits of this constitution or may not levy or increase any other tax which is not authorized by this constitution unless the legislature approves the imposition of that tax and unless the voters of the area go to the polls and vote for it. Taxation has become a real problem in this country and I think the people are not going to stand by for increased taxes unless they are given the opportunity to vote on those taxes, so this gives them that right. It makes sure that the legislature can't pass a law imposing a tax on a locality without the approval of the people in that locality, not does it allow the legislature to come along and authorize a local governing body to impose a tax on a locality without the approval of the people in that locality. So, I urge the adoption of this amendment.

Further Discussion

Mr. Perez: Mr. Chairman and ladies and gentlemen of this convention, I would have hoped that Mr. Jenkins would have read Section 35 of our Local Government provision which goes into the authority for the taxing power. I suggest to you that this is not the time to consider the question of the limitations upon local government to tax. If there are any amendments which should be offered, they should be offered to Section 35. Section 35 specifically provides, "All political subdivisions may exercise the power of taxation subject to such limitations as may be elsewhere provided in the constitution, under authority granted to them by the legislature for parish, municipal and local purposes, strictly public in their nature. Provisions of this section shall not apply to, nor affect, similar grants to such political subdivisions under other sections of this constitution which are self-operative." I would hope that Mr. Jenkins would be agreeable to withdraw his amendment at this time, so that we may take up the question of taxation in an orderly fashion.

Question

Mr. Perez: Mr. Perez, in Section 35, would you agree along with the idea of providing that there must be a vote of the people before a tax could be imposed or increased on the local government level?

Mr. Perez: Mr. Jenkins, every provision in the constitution with regard to the right to tax by local government has a specific provision requiring a vote of the people. I cannot say to you at this time that the legislature in some years hence might want, under certain conditions, to give the authority to levy a tax without the vote of the people, but again, I'm not going to answer your question directly because I believe that will address itself to when we get to Section 35, and I believe we would move a lot more...lot quicker if the...you would have read the particular provision and we could have considered it at that time. I urge you to defeat the amendment and then we will consider whatever further limitations on taxation that the body would like to do at the time we consider Section 35.

Further Discussion

Mr. Jenkins: Mr. Chairman and ladies and gentlemen of this convention, I would have hoped that Mr. Perez would have read Section 35 of our Local Government provision which goes into the authority for the taxing power. I suggest to you that this is not the time to consider the question of the limitations upon local government to tax. If there are any amendments which should be offered, they should be offered to Section 35. Section 35 specifically provides, "All political subdivisions may exercise the power of taxation subject to such limitations as may be elsewhere provided in the constitution, under authority granted to them by the legislature for parish, municipal and local purposes, strictly public in their nature. Provisions of this section shall not apply to, nor affect, similar grants to such political subdivisions under other sections of this constitution which are self-operative." I would hope that Mr. Jenkins would be agreeable to withdraw his amendment at this time, so that we may take up the question of taxation in an orderly fashion.

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new tax can be imposed, and I think that's all Mr. Jenkins is trying to do. He does not tie the hands of the local political subdivisions in any way; he just says that if it's a new form of taxation, that they must have a vote of the people before they can be imposed. Now, it has been said to me that there are some home rule charters that allow for taxation without the vote of the people. That may or may not be the case. If there...if that is the case, it's—the idea is abhorrent to me. It seems to me in a nation that's being taxed to death, the least we can expect is for our constitution to require a vote of the people, and that's all Mr. Jenkins is trying to do. I think the amendment is quite good, and I think it's certainly in order and appropos to the general concept of this constitution: that is, government for all, but with reasonable limitations.

Questions

Mr. Perez Mr. Jenkins [Mr. Roemer], did you say, but...don't you agree that if that is the pleasure of the convention, we can take care of that when we get to Section 35, instead of taking it up out of order now?

Mr. Roemer Well, perhaps we can, Mr. Perez, but I would submit to you that if you listened to my opening remarks, you seem to have given a nod in Section 35 to the need to be aware of other provisions in this constitution. You say just that. It seems, in addition, to me, to be relevant in limitations on local political subdivisions to put this most basic limitation on those local political subdivisions.

Mr. Lanier Mr. Roemer, aren't there certain types of taxes like special assessments, etc., that are imposed not with a vote of the people?

Mr. Roemer Is that a question or a statement?

Mr. Lanier I'm...did you know?

Mr. Roemer No.

Further Discussion

Mr. Conroy On previous occasions when matters relating to finance and taxation have come before this convention, I have urged the convention not to act upon them at that time, but to postpone them until such time as they can be considered in proper context. This, again, is one of those occasions. I urge you to defeat the Jenkins amendment at this time so that the whole problem can be placed in proper context and studied in Section 35 with regard to taxation by local governmental units. It may well be that there are certain kinds of taxes that a local governmental subdivision should be able to increase or to levy without a vote of the people. I don't sure what we want here by taxes, whether it includes a special assessment or not. This point was brought out by Mr. Lanier's question. I think we again get into the question of home rule. We don't have a limitation of this kind on the legislature of the state; we don't require the state to submit all taxes to a vote of the people throughout the state; and when you have a home rule charter in which the people of a governmental subdivision have decided that they want their governmental unit to be able to exercise certain powers of taxation, I don't see any reason for this constitution to limit the possibility of such authority being exercised by the local governing unit. I yield to any questions.

Questions

Mr. Willis Mr. Conroy, I commend you for what you said and in the interest of time the most invaluable—the most valuable element we are about...isn't this the best way to drag and drop...is by proposing amendments to a section under the guise of amending it and then scratching away at a section beforehand and then something that refers to taxation?

Mr. Conroy Yes, in addition to dragging anchor, it also confuses the issues and I think...makes them very difficult for the delegates here to comprehend, the significance of what's going on.

Mr. Willis Very good.

Mr. Arnette I was going to speak, Mr. Conroy, but I think I can ask you a question that might clear up my problem. Section 4 of Mr. Jenkins' amendment says that you need a vote of the legislature and a majority of electors.

Mr. Conroy That's correct.

Mr. Arnette Now, even if the people of a locality want the tax, they vote it themselves, you still have to go to the legislature under this provision. Do you think that's a good idea?

Mr. Conroy I certainly do not, Mr. Arnette, but as I said before, I hated to get into a discussion of too much of the merits here because I think it's subject to too many comments and criticisms and minor changes. I think if this passed, we'd find a whole bunch of additional amendments then being promoted on the floor to properly define and place this in proper perspective.

I urge you to reject this amendment and I move the previous question.

[Previous Question ordered. Record vote ordered. Amendment rejected: 14-19. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Dennis]. On page 6, between lines 31 and 32, delete Floor Amendment No. 2 proposed by Delegate Avant, et al. and adopted by the convention on September 26th and insert in lieu thereof the following: "(B) This article shall not limit the power of the legislature to enact laws of statewide concern."

Now, Mr. Dennis, we've already got that amendment deleted. So all we need to do is add a new paragraph and we need to call it "(C)" now. We've got a Paragraph (B) already.

The intent of the amendment--I'm going to have to change the instructions--is to leave the Casey amendment and add this language as a Paragraph (C). The instructions will read and I'll correct the instructions on the desk: On page 6, between lines 31 and 32, and following the language added by the Casey amendment, insert the following...So, this would be added as a third paragraph, Paragraph (C).

[Quorum Call: 93 delegates present and a quorum.]

Explanation

Mr. Dennis Mr. Chairman and fellow delegates, I'm offering this amendment as a separate section--separate paragraph to this section. The amendment simply says that "this article shall not limit the power of the legislature to enact laws of statewide concern." The reason I'm offering this amendment is, ladies and gentlemen, we have not resolved the issue we've been grappling with. In Sections 8 and 9, which we have previously adopted, we have granted certain powers to local governments and Mr. Casey's amendment, which was just adopted, simply says that "the police power of the state shall not be abridged." Now, Mr. Casey's amendment either is meaningless, or it does away with the powers we granted under Sections 8 and 9. If you read it literally that "the police power shall not be abridged," then 8 and 9 would be in conflict with this, because they do abridge the police power of the state. However, if you read it to override 8 and 9...if you don't read it to override 8 and 9, then it's meaningless; it doesn't limit the power of local government one whit. Now, I submit to you that there are some areas in our law which can, although they may affect local government powers, can

be one of these areas. We may be forced to enact statewide laws to deal with problems that prevent us from having a healthy environment, and we may find ourselves thwarted in that regard by local government. I think that has usurped the power of the state in carrying out this function. Now, like Mr. Casey, I spent some time in the library this morning on this problem. I was looking for some way of compromising this issue, and--I could find but one const...state constitution in this country, and that was in the state of Hawaii. I then looked at a great number--which has as powerful a local government section as we have just adopted in Sections 8 and 9. That was in the Hawaiian Constitution which says that "charter provisions with respect to a political subdivision's executive, legislative and administrative powers shall be subject to the superior or statutory provisions." However, in that constitution they went on to recognize exactly what I'm trying to tell you right now--that there are some problems of statewide concern with regard to which we cannot tie the state legislature's hands. This...amendment that I am now submitting is taken verbatim from the section of the Hawaiian Constitution and says "this article shall not limit the power of the legislature to enact laws of statewide concern." Now, ladies and gentlemen, I submit to you that we...we haven't clearly dealt with this issue. I agree wholeheartedly with what Mr. Anzalone said yesterday--we don't know who the hell it is. Now, we all keep saying that we want local home rule to take care of local problems, but we all recognize--even Mr. Casey said this--that there are some statewide problems that need to be dealt with by the state legislature, and that is all this amendment does. This amendment leaves up to the legislature the local government, but it says that, nevertheless, the state legislature will still have the power to enact laws of statewide concern. Now, I believe this is what a large number of us want to do. We want strong home rule, but yet we want that home rule to be tempered in the case there is a problem of overriding state interest to the point that the legislature can enact a law to protect a statewide concern or a statewide interest. So, I ask you to please think about this amendment and support this amendment, because I believe that this comes closest to doing what I think that the fair-minded delegates want to do, which is to give as much local home rule as possible, but yet preserve to the state its right to deal with statewide concern.

Mr. Conroy Judge Dennis, I sympathize with the problem which you mentioned about the confusion that might exist, but I'm not sure that we don't have more confusion here. This is under the section entitled "Limitations of Local Governmental Subdivisions" and your suggested language is that "this article shall not limit the power of the legislature to enact such laws as may be deemed appropriate" that there is something that has been done in this article up to this point which would limit the power of the legislature to enact such laws?

Mr. Conroy But,

[illegible]

the local governmental subdivision may exercise any power and perform any function necessary or proper for the management of the affairs of the local governmental subdivision not denied by general law,¹ which seems to me to recognize already the power of the legislature to enact such general laws and, in turn, to limit the local governmental unit to matters which pertain to local governmental matters.

Mr. Dennis: Mr. Conroy, I...I know you well enough to know that you know this area better than that and that you know that we have preserved the organization and structure---these matters---exclusively to local government under home rule charters, and you also know that there have been court decisions which say that some things are structurally and organizationally that you might not have thought before those issues were decided. The thing that...if that interferes with the legislature dealing with a statewide problem in the future--and what I can see right on the horizon is dealing with ecology problems--I don't think we ought to thwart the legislature in that regard because what we are going to end up doing is coming back and amending this constitution, to say that the legislature can deal with ecology problems and problems of the climate here and even problems of justice in this state, those that need to be treated in order to get at a statewide concern.

Mr. Conroy This, then, is similar to the amendment which you had... is similar in purpose to the amendment which you had proposed that we dealt with on Section 8, then, when we dealt with that aspect of local government--The structure and organization sentence. Is that right?

Mr. Dennis No..as I said earlier, this is different. It is taken from the Hawaii Constitution which has a similar strong home rule provision in it. They thought it necessary to qualify that in the area of statewide concern. I see the wisdom of that, and I hope that the convention will see that; otherwise, I think we are going to be coming back and amending this constitution continuously in the future.

Mr. Tommy Wudge Dennis, by your amendment, do you imply in any way that the other articles to this constitution might limit the legislature from enacting laws of statewide concern? You just mentioned this article shall not. Do you imply that the other articles might limit the legislature in this area, such as the Bill of Rights, or the ~~Bill of~~ Bill of whatever? To enact laws of statewide concern?

Since you are the one who would abridge constitutional incrimination if you were on a statewide basis, but you are not, and you are not acting for the state, cannot take it away from you.

Mr. Tamm: If you notice, in our history
ing "a law of state
state." Do
these laws of
ceived?

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powers solely to local governments to take advantage of it. I'm saying that's fine and good, but if that gets in the way of the legislature dealing with a statewide concern, I think the overriding state interest must be paramount and the legislature must be given the right to enact a law. If we don't, I'll guarantee you we'll be amending this constitution to take care of such a problem.

Mr. Toomy But you don't say in your amendment that these laws will be unified...applicable throughout the state.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I share Judge Dennis' concern about this problem. I, however, wish to approach it a little different. As I appreciate it, he would propose, as an amendment to a section relating to the limitation insofar as local governments are concerned, a prohibitory type language insofar as those matters of statewide concern might address themselves. I look upon this as more an entire section as distinguished from an amendment to this section. I do believe as he does, that when we get through, if we ever do, with the article on Local Government, that something comparable to this will be necessary. I do believe in this section of the article it's inapplicable and premature. I would join Judge Dennis in the preparation of a similar type amendment to provide for a section in a more applicable place, perhaps the end, to contain language somewhat similar to this. I do not oppose the concept; I oppose its location and the manner in which it's currently being presented, and I would suggest, therefore, that we vote against this amendment in its present posture.

Vice Chairman Casey in the Chair

Questions

Mr. Lanier Mr. Pugh, would you agree with me that if we put this language in this particular section, that it could be construed to mean that the legislature could by general law impair the organization and structure of home rule units?

Mr. Pugh I think it's a possible construction. The use of the word "article" here concerns me greatly. If...if he wanted to say "this section," then perhaps it might deal strictly with this, but I worry about a phrase referring to an article that's contained within a subsection of a specific section.

Mr. Dennis Mr. Pugh, do you realize that Mr. Casey's amendment refers to the article also?

Mr. Pugh Yes, sir, and I voted against Mr. Casey's amendment.

Mr. Dennis Well, Mr. Pugh, don't you agree that if we adopt this amendment here or anywhere else, it's going to mean the same thing and if you disagree with the placement, that might be a matter that could be considered by Style and Drafting.

Mr. Pugh I don't disagree with the concept at all, Judge Dennis; I'm with you one hundred percent. I am concerned about whether or not it would properly flow in this particular place in the constitution. I am not in disagreement with the concept. I think it's one absolutely needed.

Mr. Willis Mr. Pugh, don't you think that the very first independent clause of the Legislative Article supplants, replaces and indeed takes into consideration everything Judge Dennis wants to do and that there's no need for further words when it says "the legislative power of the state is vested in the legislature"?

Mr. Pugh Well, I don't think that resolves the issue that Judge Dennis has raised; however, unfortunately, I was not here at the time the Legislative

Article was passed.

Mr. Willis Well, the legislative power is the power to legislate for statewide concern, isn't it?

Mr. Pugh Yes, it is, but we run into the problem of whether or not, in reference to these home rule charters, if it's pre...if it's preempted the entire field relative to these matters. I think Judge Dennis has got an excellent point. I just am concerned about sticking it right here. I think it's too important to be a subsection.

Mr. Willis Well...doesn't this first independent clause of the Legislative Article completely subordinate the entire Local Government Article for the reason that the local government can only operate within its own sphere, a meager poor privilege it has indeed, for the people which are concerned in that sphere.

Mr. Pugh No, sir. I think that matters relating to statewide concern necessarily would be within the ambit of a local subdivision.

Further Discussion

Ms. Zervigon Mr. Vice-Chairman and delegates, I rise in opposition to the amendment, not because I oppose the legislature passing general laws, but because I find the wording very fuzzy. In the research that we did in the preparation of our article, one of the local government sections that we read was the one that was passed in Colorado? The Colorado Constitution uses the words "statewide concern". The legislature may deal with those things of statewide concern. Local government may deal with those things of local concern. That constitution stayed in the courts for thirty-five years trying to decide...define and redefine what was of statewide concern as opposed to what was of local concern. I believe that the way we have it worded now is clear. The words "police power" in the Casey amendment are defined in the statutes and have been litigated over time. We did not deny them," referring to the powers of local government, are as clear as they can be. The words "statewide concern" are unclear. If the state feels concerned about one particular local government problem, may they act upon it or not; is that of local concern as opposed to statewide concern? Let's leave the legislature the power to act, but let's put it in words that are clear and that we know what they mean.

Questions

Mr. Tobias Ms. Zervigon, do you think that women are more qualified to vote on this amendment because they know more about home rule?

Ms. Zervigon Mr. Tobias, I appreciate your warning me about that question five days ago, and that's why I haven't taken the mike much on this article.

Mr. Casey Ms. Zervigon, did you answer the question, though?

Ms. Zervigon Some women do and some women don't, but in Mr. Tobias' home, he's the king.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, in the vein that Mrs. Zervigon spoke on, we did a lot of research into this question of what is and what is not a general law in preparing this Local Government Article. Now, I will readily concede that by far the most legitimate argument that has been raised in debate here by the opponents of the strong home rule provisions that we have proposed and which have thus far been successful is the argument about the effect on legitimate general statewide laws. But, I oppose this amendment for a very particular reason. I would ask you, please, if you would, to look

tion there of general law. I was the one who wrote that up to submit to the committee and, of course, it was changed somewhat thereafter. It says, "General law means a law of statewide concern enacted by the legislature which is uniformly applicable to all persons or to all political subdivisions in the entire state, or which is uniformly applicable to all persons or to all political subdivisions within the same class." Now, if you will look at the Model State Constitution and the Illinois Constitution, you will see that this definition combines the two definitions, in greater part, that they use. This is a very nebulous concept, but if you just say a law of statewide concern, you run into this problem. Let's put it in the context of Louisiana history. New Orleans, being one of the largest ports in the world and certainly in the United States, is certainly of statewide concern. It is entirely arguable that a law which would affect only New Orleans would be of statewide concern even though it were applied discriminatorily to the city of New Orleans and not to the entire state, or not even to all political subdivisions within a class defined. If you will look at Section 6 of the Classification Article that we have adopted, we say there that the classes have to be related to the purpose of the classification. The example that is used would be in the context of Louisiana that it would be reasonable to classify all coastal parishes, let's say, in a matter of ecology such as what Judge Dennis was talking about. But, if you just say a law of statewide concern, I fear that you have not nearly defined your terms as thoroughly as you need to define them. Believe me, if I have been sincere about my argument that I have made, I share the concern of the people who are concerned about the general applicability of law, statewide. But, I submit to you that this language does not do the job and I agree with Mr. Pugh, although he and I have disagreed on many things, that this would be appropriate work for a separate section of this article or somewhere else in the constitution. Mr. Zervigon is absolutely correct in pointing out that in Colorado they litigated for thirty-five years in the courts over what was statewide concern and what was local concern. Other states have had the same experience by trying to use a similar definition. You simply have got to get into the question more explicitly than that. I would also point out that you here encounter the whole problem of the fact that you need special laws or local laws. We would all recognize the fact that the legislature has to be able to pass certain special or local laws to affect just one municipality, or just one parish. But, these are local or special laws by request, and these involve a question of the right to sue that these involve personal rights such as the right to sue that we have argued about in the sovereign immunity question.

Further Discussion

Mr. Pugh: This will be the third time I've come about the meaning of what we've done so far, and the relative positions of state government and local government. I am concerned as some others are about the position of this in this article and I have some specific reasons why I am concerned about its positioning because I don't understand the interrelation of this particular provision and Section 30. Section 30 of this proposal, if adopted, says, "The provisions of this constitution shall be paramount and neither the legislature nor any political subdivision shall enact any laws or ordinances in conflict therewith." This proposed amendment being fixed where it is under "Section 12 on Limitations" article shall not limit the power of the legislature to enact laws of statewide concern. I think it is, that a local governmental subdivision could

on the local governmental subdivision, that's the only significance I can really attribute to this language here, is to pull away from a local governmental subdivision the power to enact ordinances which might deal with matters of statewide concern even though they may also be of local concern. So, as others have suggested, I would urge the submission of this amendment to consider withdrawing it, and to place it in better language and better context to achieve his objective, and urge that the convention recognize that in its present posture as another attempt to bring before the convention issues which the convention has defeated previously. I urge the defeat of the amendment.

Further Discussion

Mr. Arnette: I just have one very quick point to make, and that is that possibly the last part of this particular provision might be all right, allowing the legislature to make laws of statewide concern. But, when you add the first part, it says "This article shall not limit that power," you have just said that the legislature may enact any law, any law of statewide concern against any home rule charter, against any local government. That's what it does, ladies and gentlemen. It totally destroys any home rule charter the legislature so chooses. All they merely need to say is, "is of statewide concern, is of statewide concern for us to have uniform local laws." All they have to do is pass a law saying that, and that would destroy all home rule charters, all local plans of government, and they would just enact all your local laws for you. I'd just like to point this out before we vote on this particular amendment. Thank you.

Closing

Mr. Dennis: Mr. Chairman, fellow delegates, we've been vacillating to some extent because I think we're groping for a fair solution. Now, Mr. Casey admitted earlier that perhaps the committee proposal was too strong in granting powers to local government. I think that was the reason yesterday we adopted Mr. Avant's amendment but then we got worried about that because we thought that that had taken the police power away from the local governments. But, I submit to you Mr. Casey's amendment didn't solve the problem of a fair balance of power between local governments and the state legislature because all his amendment said was, "There shall be no abridgment of the police power." Now, that can't mean but one thing—what this amendment says "This article shall not limit the power of the legislature to enact laws of statewide concern." Someone complained that that's fuzzy. Well, I submit to you it's not nearly as fuzzy as police power. Mr. Casey said he spent three hours last night in corpus juris secundum trying to find out what "police power" meant, and he wasn't able to tell you what it meant in the time he was up here. I think what we really want is for the legislature to enact upon statewide problems and the local governments to govern local problems. That's what this amendment does, is fairly and clearly define the area of power of local government and statewide concerns. I think we're all in a better position now to drawing the line fairly in this very difficult

Questions

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matter of statewide concern?

Mr. Dennis I would say that zoning is not a matter of statewide concern unless it interfered with an overriding statewide interest such as preserving a wholesome ecology.

Mr. Duval So you think...

Mr. Dennis I think that we could come to a time in this state in which ecological problems could become so severe that it would require the state legislature to enact laws to protect the ecology, and I believe if that situation should arise, if it should become a matter of great statewide concern, that the legislature should not be thwarted in its ability to act in this area.

Mr. Duval Sir, do you think the legislature...in answer to my question, zoning, then can be a matter of state concern. Is that right? In answer to...

Mr. Dennis No, not zoning itself would not be. The protection of the ecology would be a situation I could see that would arise in which the legislature would need to act in an area that you may have carved off and preserved exclusively to a local government if you don't have this amendment.

Mr. Duval Under this section as written, couldn't the legislature, by general law, prohibit or deny any type of that...any type of activity like that?

[Record vote ordered. Amendment rejected: 52-68. Motion to reconsider tabled. Previous Question ordered on the Section. Quorum call: 113 delegates present and a quorum. Section passed: 114-7. Motion to reconsider passed.]

Amendment

Mr. Poynter The amendment is being passed out at this time.

Amendment No. 1 [by Mr. Singletary]. On page 6, between lines 31 and 32, add the following section: "Section 12.1. Codification of Ordinances "Section 12.1. The governing authority of each political subdivision shall within two years of the effective date of the adoption of this constitution, cause a code to be prepared containing all of the ordinances of the political subdivision of general application which are appropriate for continuation as law. When the code shall have been prepared the governing authority of the political subdivision shall cause copies of the same to be prepared and made available for public distribution. All proposed ordinances of general application adopted after the approval of the code shall be adopted as amendments or additions to the code."

Explanation

Mr. Singletary Mr. Chairman, ladies and gentlemen, this section would require local government to put their ordinances into a code which would be readily available to the public. It is essentially saying that the people have a right to know. This section is intended to ease a gigantic problem—the problem of knowing what the local law is. It would require political subdivisions to put their ordinances of general application into a code. Let me illustrate. In my area, I must make a sixty mile round trip to the courthouse and look in the minute entries of the meetings of the police jury to find a police jury ordinance. If we are going to give local government more lawmaking power, then local government should, also, have the additional obligation to put that law into a form that people can get their hands on and read so that they will know what law they are subject to. This section would not impose an unreasonable financial obligation. A fee could be charged to any individual who wanted a copy of this code. Also, if this code were merely xeroxed, pages of the ordinances held together by a staple, I believe this would be in compliance with the section.

This would be inexpensive, but still accomplish the purpose of making the law available to the public. I believe this matter is so basic and so important that because...and because we are giving such important new lawmaking authority to local government, that this section should be put in the new constitution. Shreveport, Baton Rouge and New Orleans have already put their ordinances into a code, and so have many other bodies, so this wouldn't affect them. We have put many safeguards and restraints in the constitution in the Legislative Article in order to insure that the people will be informed about what the...about the law that the legislature makes. We have not done this in the constitution with regard to local government. So, I think it is reasonable to put a provision in this constitution to provide that the people know what the law is. I urge the adoption of this section, and I request a record vote. I'll yield to any questions.

Questions

Mr. De Blieux Mr. Singletary, do you know anything in this constitution that we have approved so far that's coming up that would prevent local subdivisions from doing that without this section?

Mr. Singletary No, sir, but I think we need to impose the obligation to do it.

Mr. De Blieux Do you know anything that would prohibit the legislature from requiring them to do that?

Mr. Singletary No, sir, I don't. But, I want to make sure that we do it.

Mr. De Blieux Well, don't you think that would be something that we ought to leave out of this constitution and let the legislature take care of?

Mr. Singletary No, sir, I don't. In the Legislative Article we provide that local laws had to be advertised, we provided for style of law, passage of law, signing of bills, effective date of laws, general public hearings. We provided none of those with regard to local government, and I think that this is a basic safeguard that we have to provide. I think it's extremely important that we do this.

Mrs. Warren Mr. Singletary, did you know that I think that's the nicest thing that has happened in this convention and I would love to be a coauthor, if you don't get but two votes, mine and yours?

Mr. Singletary Thank you, Mrs. Warren.

Mr. Roy Mr. Singletary, do you know that I'm from a small town and that they don't do these things. I think this is great.

Mr. Singletary Thank you, Chris. It's a real problem to find the local law and this would make...

Mr. Henry Well, that's just real wonderful.

Mr. Jenkins Mr. Singletary, of course, the legislature must meet certain requirements when it enacts statutes. They have to be published so that the people can know about them. In this constitution, we are giving local governing authorities a great additional power. Unless they also publish and make known these ordinances and resolutions that they pass, isn't it true that the people would really have no means to know what had been passed?

Mr. Singletary Absolutely. I think you are right.

Mr. Alexander Mr. Singletary, throughout this convention we've been, possibly, most likely, I've been opposing anyway, any move on the part of the legislature to impose anything on a local governing agency that would cost money. Now, we are saying

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at elections held in accordance with the election laws of the state. Such officials shall not be subject to removal by the legislature".

Explanation

Mr. Lanier Mr. Chairman and fellow delegates, I think that this section is pretty well self-explanatory. I would like to point out a couple of little things. As you will notice, it says that "the electors shall have the exclusive right to elect the members of their governing authority." It doesn't say anything about chief executive officer. This is because in commission form of city governments and in police juries, the unit itself designates the chief executive officer and that's why that particular distinction is made there. This particular provision was recommended by the Louisiana Law Institute, and it is, also, in the project of the new Louisiana Constitution. It is presently in existence in our 1951 Constitution in Article XIV, Section 40, in a slightly different form. It's my understanding there is an amendment here to delete the whole section by Mr. Pugh. I don't think that there is anything particularly controversial about this. The question for you to decide, of course, is whether or not this should be in the constitution, that we give this protection to local governmental officials. The committee felt as a matter of policy and judgment that this type of protection should be given to the local governmental officials in the constitution, and that's why we put it in. I'd be happy to yield to any questions at this time, Mr. Chairman.

Questions

Mr. Tobias Mr. Lanier, do you believe that any other group could elect a local official? What do you envisage by putting this in? I mean, to me it seems like an inherent right of a local governmental body to elect its...the electors...

Mr. Lanier We are constitutionally stating that these people have the right to elect their officials.

Mr. Tobias But, don't they have that right anyway?

Mr. Lanier I'm not so sure. I don't think in the Bill of Rights we had such of a right. Perhaps Chairman Jackson could enlighten me on that, but I don't recall us giving that right specifically in the Bill of Rights.

Mr. Tobias Your last sentence reads: "Such officials shall not be subject to removal by the legislature." I assume you are referring to addressing an individual out of office.

Mr. Lanier I think that's what we were primarily thinking about at that time.

Mr. Tobias Okay. Since we have, in effect, deleted the addressing out of office provision out of the legislative proposal, do you think this sentence is necessary here?

Mr. Lanier I would say that there is less of a reason.

Mr. Champagne This has partially been answered, but don't you think that if we...if some government...I don't know what it would be, maybe, the legislature says, "You cannot elect your officials any longer," don't you think that these people have a right under the constitution to question that?

Mr. Lanier Well, this is specifically designed to prohibit that type of conduct by the governor.

Mr. O'Neill Wait, I generally like what you've done. I just have a question about it. Would this allow the people of the parish, say, to elect

a city council and then for that city council to appoint executives to administrate the council, for example?

Mr. Lanier Yes. One of the reasons we made the distinction on the chief executive officer was because, as you know, in the commission form of government the council designates the commissioner who is not an elected official but is the chief executive officer. In the police jury system each juror is individually elected and then the jury itself elects their officers.

Mr. O'Neill Do you know if any parish or local municipality in Louisiana has the form of government which you would provide here? I'm not sure about it.

Mr. Lanier This doesn't provide a form of government...

Mr. O'Neill Well, does any local government, you know, appoint administrators right now, that you know of?

Mr. Lanier I think New Orleans has an administrative officer of some type, but I don't know what they call him.

Mr. Munson Mr. Lanier, is a waterworks district a governing authority?

Mr. Lanier It is not a local governmental subdivision. If you look in definitions, you'll see that a local...

Mr. Munson It says, "Each governmental subdivision shall have the...exclusive right to elect members of their governing authority." Now, is a waterworks district a governing authority?

Mr. Lanier If you will look in the definitions, Mr. Munson, you will see under Section 51, item No. 1, "local governmental subdivision" means any parish or municipality.

Mr. Munson Where is that?

Mr. Lanier That's on page 27.

Amendment

Mr. Poynter Amendment sent up by Delegate Pugh as follows:
Amendment No. 1, on page 6, delete line 32 in its entirety and on page 7 delete lines 1 through 7, both inclusive, in their entirety.

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, I feel this is one section that we can clearly do without. There's nothing in this section that good common sense doesn't dictate, anyway; as the question raised over here, who's going to elect them if those people don't? As to the suggestion that commission forms of government provide that the elected officials elect the mayor, I assure you, nothing is further from the truth. A pure commission form of government provides that the people elect the person who will be elected as their mayor. Now, one thing that disturbs me about Section 13 in addition to the fact we obviously don't need it, is the fact that if you read Section 13, you cannot have single member elections in Louisiana. If you don't have single member elections in Louisiana, you don't have constitutional elections in Louisiana. This section provides that the electors, the electors, shall elect the members of their governing authority. A clear reading of that means that each one of them has to vote for all of them. Nothing is further from the constitutional truth today in an election, but that it needs to be by single member district. I tell you that this provides otherwise; I tell you that it will not stand federal constitutional muster, and if there's anything we need

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To throw into chaos less, it's our entire structure of electing local officials. I suggest that we adopt the amendment and thereby delete the section for that's the only part of the section to add much merit at all, and I worry about whether or not that doesn't create an impeachment problem, is the last sentence, and the speaker for the section readily acknowledged that that had little if any continuing benefit in the section. I reiterate, that's the only part where we can delete from the constitution language serving little or no purpose, obviously not of constitutional timber and import, and I ask you to delete it.

Questions

Mr. Flory Mr. Pugh, as I read Section 13, on lines 3 and 4 particularly, this would allow for the appointment of the chief executive officer of the governing authority. Would it not?

Mr. Pugh: Not only does it provide for that, Mr. Lanier thinks that commission forms of government actually provide for such a method.

Mr. Willis Mr. Pugh, if the election of rulers, local rulers, is an inalienable right, do you not think that it should be delineated with fastidious accuracy if it is so vital that the people have such a right?

the people have the right to
elect elections?

Mr. WILLIAM No. 117, to elect.

Mr. Pugh To elect the people?

Mr. Willis Yes, yes.

Mr. Pugh Who else is going to elect them?

Mr. Willis Thank you. My next question is, you say that common sense says we should have...using your own argument, isn't freedom of speech and freedom of press an inalienable right?

Mr. Pugh I believe them to be.

Mr. Willis: Then using your own argument, would you be willing to strike that out of the constitution because common good sense dictates that we have that right anyway?

Mr. Pugh. You mean the freedom of speech?

Mr. Willi: Yes, and press.

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

"... didn't you see how you
doesn't balance?"

... I believe that were it not for the United States Constitution...

Mr. Willis. But we're writing a state constitution.

Mr. Pugh ...we could in fact remove freedom of the speech and, for God's sake, don't think I'm

It is only a small part of my
 50 last collection. I am sure you will
 51 find it very interesting. I am sure
 52 you will find it very interesting.

Mr. Pugh We've been sitting here and talking, and we've been talking for a long time, and we've been talking about all these things, and we've been talking about all these things, and now we're going to tell them that you've got to have electors electing these people.

Mr. Lanier: Mr. Pugh, are you familiar with the

Mr. Pugh Yes, sir.

Mr. Lanier Aren't the _____

Mr. Pugh : I am familiar with the commission form of government; I am familiar not with commission-manager form of government, because I know of no such form of government.

Mr. Lanier. Doesn't DeRidder have one?

Mr. Pugh. What?

Mr. Lanier DeRidder, Louisiana, don't they have
a commission manager?

for a manager, but it is not a business.

officer appointed by the commission?

Mr. Pugh No, sir. He is not. Let me tell you that I spent one year traveling to about eighteen different countries studying every form of government, including every state that had the commission form of government, and I assure you there is no commission-manager form of government. There are three forms of government and that's not one of them.

Mr. Miller: Let me ask you this, on this single member district you mean to say under the present law, you cannot have a single member district in a local governmental unit?

Mr. Pugh No, sir. I didn't say that. I'm not unmindful of the fact of what the present constitution says. I'm, also, not unmindful of the fact that we must have single member elections and will have them.

Mr. Lanier: Are you aware that in the parish of Lafourche by federal court order we have multi-member districts in our local governmental units that's been approved by the court?

Mr. Pugh I'm aware of the fact that the federal courts first took the position that unless you reapportioned, you necessarily had to run at large. I'm, also, of the mind and knowledge that they have retreated from that position ever since.

Further Discussion

Mr. A. Jackson. Mr. Chairman, ladies and gentlemen of this convention, I rise in support of the amendment to delete this section because the language as I understand it and appreciate it is very confusing. First of all, there is great question in my mind as to what the first sentence really means. As I understand the section, because as I interpret the language in the first sentence, there is some question as to whether or not the full concept of single member districts as authorized by a previous article of this constitution is still in effect. I do not believe that is at best questionable, the fact that we might return to multiple districts or that I am opposed to it because the last sentence suggests that if and when the legislature enacts a code of ethics, there would be some question in my mind as to whether or not we would be in a position to affect the operations, and the activities of the various departments. I think that Mr. Fugh is correct when he says that there are a number of very serious questions. Mr. Chairman, if there is any other question, I will be glad to answer it.

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Mr. Henry Mr. Perez has wanted to speak, Mr. Jackson.

Mr. A. Jackson I withdraw my motion.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, first let me clarify one point with respect to the last sentence which appears on lines 6 and 7. The reason that that sentence was put in that "such officials shall not be subject to removal by the legislature," was because of the fact that there was a proposal and also in the present constitution there is a provision which would authorize by direct action the legislature to address out of office a public official. We want to make sure then they could not do so, now that that provision has been knocked out of the proposed new constitution, I will have an amendment which will delete that last sentence so that we can set that particular situation at rest. The only purpose of Section 13 is to guarantee both with respect to any state action or local action that the electors of the local governmental subdivision shall have the exclusive right to elect the members of their governing authority. It seems to me that this is a basic constitutional right that we are putting in here to be sure that there is no question that that can be done, I'm a little bit amazed that the Chairman of the Committee on the Bill of Rights would be against this because this is an extension of the rights, to be sure that there would be no problem with respect to it. Now let me call your attention to the clause "if a plan or form of government or home rule charter so provides, their chief executive officer." The problem we have is in the police jury system, the police jury president is not elected by the people, he's elected as a member of the police jury, then the police jury members elect their president. That's the same with respect to certain charter forms of government, so that it's only if the plan or form of government or home rule charter provides that the people do not elect their chief executive officer, they elect the members of the body. Like the police jury, then the police jury members, elected members, then elect the chief executive officer. It's a perfectly proper position, ... provision. So I submit to you that this section was placed in here in order to be sure that there was no question that either the legislature or any plan or form of government or anything else would deprive the people of electing their local officials, and I submit to you it's a proper section to be included within a constitution. I, therefore, urge you to reject the Pugh amendment, and then I will offer an amendment which will take care of deleting lines 6 and 7, or most of line 6 and line 7.

[Previous question ordered. Former vote ordered. Amendment rejected: 27-87. Motion to reconsider tabled.]

Amendment

Mr. Poynter We have identical amendments sent up by Delegates...as I appreciate them, identical amendments by Delegates Perez and Kelly, neither of which distribution copies are here. It would affect the deletion of the last sentence.

On page 7, line 6, after the word and punctuation "state," delete the remainder of the line and delete line 7 in its entirety.

Explanation

Mr. Perez The purpose of the amendment is to delete the sentence, "such officials shall not be subject to removal by the legislature" that, as I explained a little earlier, that provision was placed in there when there was a provision with respect to the legislature directly addressing people out of the legislature. Now that we have not...you can-

not hear me? Well, I'll start again.

The purpose of deleting the sentence "such officials shall not be subject to removal by the legislature" is because of the fact that we have deleted the provision which would authorize the legislature to directly address an official out of office, and since that has been deleted, this sentence should also be deleted. I move the adoption of Mr. Kelly's amendment.

Question

Mr. Pugh Mr. Perez, under this Section 13 where you say the electors have the exclusive right to elect the members of their governing authority, suppose something happens to one member of that governing authority, how is he going to be appointed?

Mr. Henry Mr. Pugh, I don't think that has anything to do with the amendment.

Mr. Pugh Oh, I'm sorry.

Mr. Perez We have a provision on filling of vacancies two sections down.

Mr. Henry I believe that your question doesn't pertain to the amendment.

[Amendment adopted without objection.]

Amendment

Mr. Poynter This amendment is offered by Delegate Perez...Velazquez, excuse me.

There is a difference.

On page 7, line 7, at the end of the line add the following: "Nothing herein shall be construed to prohibit the election of any official based on apportionment by population."

Mr. Velazquez, with your permission since that last sentence has now been deleted, I'm going to make this read, "On page 7, line 6, immediately after the word and punctuation 'state,' add the following":

Explanation

Mr. Velazquez This is a relatively simple amendment. It just prevents every member of every governing authority from being elected at large. The amendment allows those governmental subdivisions where the governing authority is elected by single member districts to retain those districts. It won't have any effect on any district where there are court approved multiple member districts. It merely states if the people in a local area want single member districts they may have single member districts. That's all it says. I don't think that anyone here wants to prevent anyone from having single member districts who wants to have single member districts. I urge its adoption.

Mr. Perez I've just seen the amendment, just in the last half minute. If you don't mind, we can stand at ease for just a moment. I hope we can go along with it, but I want to be sure that I know what it says.

Recess

[Session adjourned until 10:00 a.m. Monday, September 28, 1973. The session was adjourned until 10:00 a.m. Monday, September 28, 1973.]

Reading of the Section

Mr. Poynter "Section 14. Local Officials; Compensation

Section 14. The compensation or method of fixing the compensation of a local elected official of any local governmental subdivision which operates under a home rule charter or plan of government as provided in Sections 7 and 8 of this Article, shall be provided in its charter. The

of local elected officials of any other local governmental subdivision shall be provided for by law. Compensation of local officials shall not be reduced during the terms for which they are elected.

Explanation

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, this article was placed in the local government Article only because of the fact that there is a provision in the article on the executive branch which has already been adopted which provides "except as otherwise provided in this constitution, the compensation of each elected official shall be fixed by the legislature." So it became necessary then to include an article in the constitution which would give the home rule charters the authority to fix the compensation or the method of fixing the compensation in their charters. It would not affect any change in the present law today, and would just be to continue on what is now in existence.

Questions

Mr. Tobias Mr. Perez, suppose a government, a local government under a home rule charter, did not want to provide the compensation or method of fixing the compensation of local officials in their charter? You by your first sentence are requiring it. Why?

Mr. Perez Well, first it's inconceivable for me to believe that if they go to the trouble of developing a home rule charter they would not want to fix the compensation of their members, and I would say that this would be a requirement that they do it. I don't think it's unreasonable. In fact, it's something that I'm sure that if you have a home rule charter that there's no question that the people would do it. The only purpose of this provision is to provide that where you have these home rule charters they have the right to fix their compensation, and it's inconceivable to me that they would not want to.

Mr. Kunez Mr. Perez, should not you have on line 12 where you have Sections 7 and 8 of this article, should not we also include Section 9 in the event that a police jury would operate, put a referendum to the people that would operate under 9, then they would also come under this particular article?

Mr. Perez If that's the pleasure of the convention, that's fine with me. What we did in this particular situation was to maintain the status quo. If an amendment is offered which would want to give the police juries the right to fix their own compensation or provide a method by which it could be fixed, I'd certainly have no objection, but the purpose of this article was to maintain the status quo.

* Champagne On line 12, would you tell me what you mean by "home rule charters"?

* Mr. Perez Home rule charters are charters which are adopted by the legislature and which are subject to amendment by the legislature.

* Champagne I know what the sections provide, we've spent a lot of time on them, but referring to them again, it says, "operates under a home rule charter or plan of government." Do you mean that?

Mr. Perez Yes, sir. Home rule charters are charters which are adopted by the legislature and which are subject to amendment by the legislature. I understand it in that way.

may fix the method by which the compensation shall be paid.

Mr. Poynter That's right. If you have a home rule charter, per month, does that mean that you have to submit it to the voters every time you want to change his salary?

Mr. Perez I think it's important to have the provision or method of fixing the compensation of a local elected official, so that if the charter provides a method of fixing the compensation, it would not have to go back to the people. It would be left to the people who adopted that plan of government.

Amendment

Mr. Poynter The amendment is sent up by Delegate Pugh.

Amendment No. 1, on page 7, delete lines 8 through 17, both inclusive, in their entirety.

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, I again arise hopefully with more persuasion to ask you to consider deleting a section. I personally believe that it's a far better thing, as Mr. Willis says, a far better thing, to go back and put the word "statewide" where it belonged in the first place, than put ten lines in here merely because we didn't put "statewide" when we had reference to the fixing of salaries for officials when it was earlier determined by this convention that it should be done by the legislature. The amendment serves no other purpose than to delete the section here because admittedly the only purpose for this section here is because, by a lack of foresight the word "statewide" was not used in reference to the section about setting the salaries by the legislature of certain officials. I think it's much better for us to rectify the earlier error than compound the felony by putting ten more unnecessary lines in the constitution.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, I hope you understand the seriousness of the deletion of this particular section. As I said before, this was not included in the original draft of our local government article. The only reason that it was placed in the local government article is because of what you, the delegates, adopted in the executive branch proposal, and that provision in the executive branch proposal says, "except as otherwise provided in this constitution, the compensation of each elected official shall be fixed by the legislature," so that it's required and necessary that we have a provision which would say that the local home rule charter people can provide either the compensation or the method of fixing the compensation. You have those provisions in all of the charters, in the charter of the city of New Orleans, in the charter of Jefferson Parish, and so forth. If we delete this section, then it would be left up to the legislature to fix the compensation of all the council members from Jefferson Parish, Orleans Parish, and so forth. I would suggest that we delete this section.

Discussion

* Mr. Willis Mr. Chairman, fellow delegates, I again arise to support the amendment. I think it's a far better thing to go back and put the word "statewide" where it belonged in the first place, than put ten lines in here merely because we didn't put "statewide" when we had reference to the fixing of salaries for officials when it was earlier determined by this convention that it should be done by the legislature. The amendment serves no other purpose than to delete the section here because admittedly the only purpose for this section here is because, by a lack of foresight the word "statewide" was not used in reference to the section about setting the salaries by the legislature of certain officials. I think it's much better for us to rectify the earlier error than compound the felony by putting ten more unnecessary lines in the constitution.

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Mr. Perez Yes, that's correct, and that's the reason that this first, it was not included in our draft, but when it was reported back to committee in order to take care of the problem that this was taken care of, and I thought that it had been taken care of, or virtually unanimous attitude on the behalf of the delegates that this provision should be in here.

Mrs. Zervigon And we've received no criticism from the Committee on the Executive Department on this, have we?

Mr. Perez Not that we know of.

Mrs. Zervigon Thank you.

Mr. Burns Mr. Perez, did I understand you, that if this section is not adopted that the legislature, we'll say, could fix the salary of the Mayor of Covington?

Mr. Perez Well, it depends upon--I'm not familiar with how Covington operates now, but--if it's a legislative charter, then it would follow that particular legislative charter, but the problem is that where you have constitutionally created charter forms of government, and because of the restriction which we have already placed which gives the legislature the right to establish salaries except as otherwise provided in the constitution, then it's necessary that we have an article to make an exception.

Mr. Pugh Mr. Perez, isn't it a fact that we can go back to the earlier article and use one word, "statewide," and eliminate all ten of these lines, and do no harm to either a home rule charter or otherwise?

Mr. Perez Mr. Pugh, it takes sixty-seven votes to suspend the rules. There may be other reasons that they might not want to reopen the matter, and I don't believe that it is fair to say we can go back to something else. I would say that if we get around to Style and Drafting, if they want to try to make that change it's all right, but I do not believe that you should subject all of these various charter forms of government to the possibility that the provisions in that charter would be set aside and that the legislature would fix the salaries of the various councilmen and elected officials from the various charter forms of government.

Mr. Pugh If I can get back to my question, is it not a fact if the convention wants to, they can back and put the word "statewide" back there, and save ten lines out of this constitution?

Mr. Perez Well, except that "statewide" you get into the question of districts, you get into the question of district officers and so forth, and I think we'd open up another can of worms there, and I believe at the time we discussed this provision that it was determined that they wanted to make a blanket provision then come back with exceptions, and that's my recollection of the discussion at that time. So I think we might have a difficult time suspending the rules to go back to it.

Mr. Rayburn Mr. Perez, certainly I think they should have that right, but I'm just wondering at the end of Section 13 where you took out the last paragraph, if we couldn't just say "such officials that are elected under this section shall also have the right to fix their compensation," and that would do about the same I think, that 13 tells who will elect them and all that, and I was just thinking if you'd just...where you did, just say, "such officials elected under this section shall have the right to fix their compensation." I mean I'm just getting a little curious about the long drawn out sections. I'm for your amendment, and I want it to pass, but I'm just wondering if

we couldn't do it with a few smaller words?

Mr. Perez Well, Senator, we have two sentences in here if you will look at it. The first sentence talks about the local home rule charter plans of government where they fix the compensation or method of fixing the compensation. The purpose of the second sentence is to maintain the status quo with regard to police juries and so forth, to make it clear that the legislature provides for their compensation, and the third sentence is that you can't be reduced during the term of office.

Mr. Rayburn Mr. Perez, I don't read that. You refer to Section 7 and 8 shall provide in this charter, and then you say "compensations or methods of fixing compensation of local elected officials or any other local government subdivisions, shall be provided by law." Well, I think we've said that prior language, that same identical language. Maybe I'm wrong, but I just think...

Mr. Perez I don't recall anything on compensation.

[Previous Question ordered. Amendment rejected: 19-82. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments [by Mr. Duval and Mr. Bollinger] sent up as follows:
Amendment No. 1. On page 7, line 16, after the word "reduced" and before the partial word "dur-" insert the words "or increased".

Explanation

Mr. Duval It's a quite simple amendment, merely says that people in office during their term... their salary or compensation cannot be raised until the next term. I think it's a simple amendment. A question of whether you think people, while in office serving a particular term, should be able to have their compensation raised while they are serving that specific term. I think it's a better measure to have their compensation come into effect after that term is served, that's all there is to it.

Questions

Mr. Mire Suppose a man would run for an office, be elected, serve one term, choose not to run again and then a new man would run for that specific office, be elected; he chooses not to run again. How long would it go before the man could get an increase?

Mr. Duval It merely provides--maybe I'm not making myself clear--it merely provides that in order for a compensation increase to go into effect it could not be while...during the term that the specific official is in office, it would go into effect the next term, in other words, after that four year term.

Mr. Mire No matter who's serving that particular next four years?

Mr. Duval That's right, that's the attentive amendment.

Mr. Mire I follow you then.

Mr. Velazquez Can't you think it's unfair for somebody to run for election and then raise his own salary?

Mr. Duval Yes.

Mr. Jenkins Mr. Duval, under the section as written by the committee, isn't it true that a local police jury could have carte blanche to raise its own salary, if it were under some form of charter of 7 or 8--Section 7 or 8--and that

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would not be able to be vetoed by anyone else?

"I would, well, if it were a charter--a
rule charter--I don't know. I think that the com-
pensation would be fixed by law, I really don't
know. It would allow them to have that done by
the legislature, yes.

Mr. Jenkins But, what I'm saying is there would be circumstances under some of these home rule charters where some people would be setting their own salaries without any check on it. Isn't that true?

Mr. Duval It's possible, yes.

Mr. Jenkins Now, isn't it also true that no one else in state government can set his own salary--not even the legislature--because the governor can always veto the legislator's salary increases.

Mr. Duval I think that's right, yes sir.

Mr. [redacted] in the case of school members who have overlapping term--and they're six years--that could make a man wait six years while everybody else is getting a raise, and he would have to wait six years and then run again in order to get more pay. Is that not right?

Mr. Duval I think that's...if they're serving overlapping terms, I think you are right, yes.

Mr. Slay If legislature or the charter provides for somebody to get an increase, do you think that they should have to wait until their term is up before...

Mr. Duval That's the purpose of this amendment.

Mr. Slay I think it's a bad one.

Mr. Duval I have been told this amendment does not apply to school boards.

Mr. O'Neill Mr. Duval, what exactly does the committee define or what do they think compensation entails, is that any compensation?

[illegible]

"Mr. Duval, you know you have a good amendment don't you, and do you know this is the only thing that Senator De Blieux and I ever agree on is this one good amendment of yours?"

Mr. Duval. It must be.

Mr. Stinson Mr. Duval, the purpose of that is, you've never known anyone run for office and his platform says "When I get in, I'm going to increase my salary," have you?

Mr. Duval. The Secretary would have to say.

Mr. Stinson Well, isn't it a fact that a great, great majority of them try to and think they are more important when they do get elected?

22. *Journal of the American Statistical Association*, 92, 1997, 1039-1049.

60. In other words, when he ran and announced he was satisfied with it and your amendment says that he should have been told that he

• *Journal of Management Education* 25(1): 10-12

I'm looking at the definition of the section and
 all sorts of things which you have brought about
 the new system, in 1941, and so on.

Q. I don't think it's important to apply to sheriffs and assessors, but the language is vague; I don't know what it really intends to imply.

10. Brown: "The very best" - more than 1000 copies
11. 11. 1111 - 1111111111

RECEIVED: May 11, 1997; accepted: May 22, 1997.

Question ordered on the Section. Section passed: 100-5. Motion to reconsider tabled. Motion to revert to Section.

Mr. Poynter Amendment No. 1 [4,
Mr. [unclear]. On page 7, delete lines 1 thro
6, both inclusive, in their entirety and
in lieu thereof the following:
"Section 13. The electors of each local gov-
ernmental subdivision shall have the exclusive
right to elect their governing authority. Nothing
herein shall be construed to prohibit the election
of any official thereof based on apportionment by
population."

Explanation

Mr. Keane Mr. Chairman, fellow delegates, this amendment was drafted after consideration of the points that were raised previously on this section. It provides that the electors of each governmental subdivision would have the exclusive right to elect members to the board of supervisors. The only point made by Mr. Velazquez, we have added the last sentence which would make it clear that nothing in this section would be construed to prohibit the election of such officials from single member districts. It seems to me that, under the circumstances, this is a positive improvement. I will leave the discussion. I think it's in proper order, at this point, and I move its adoption.

Mr. Pugh]. On page 7, delete lines 1 through 4, both inclusive, in their entirety--and for the reasons stated, I want to insert and strike the following language: "The Convention Floor Amendment No. 1 proposed by Mr. Keen and just adopted--and insert in lieu thereof the following: "The electors of each local governmental subdivision shall have the exclusive right to elect their governing authority. Nothing herein shall be construed to give the electors of any political subdivision governing authority on the basis of single member districts."

[illegible]

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[Amendment adopted without objection. Question referred as amended. Pending question ordered as the question.]

Point of Information

Mr. Rayburn Mr. Chairman, I would like to ask that the section be read again. Did they delete the part where it says that if a plan, or rather to a home rule charter, is that...all of it out now? What if a charter don't make any mention of it, they just elect them anyway they want to?

[Section referred as amended.]

Mr. Rayburn I wonder how they would get them if they don't elect them?

[Section passed: Ye-1. Motion to reconsider tabled. Motion to waive reading of Section 19 adopted without objection.]

Explanation

Mr. Kean Mr. Chairman, fellow delegates, this section deals with the filling of local governmental vacancies. It makes a slight change in the existing law, under the present law with respect to these vacancies the constitution provides that the local governmental agencies submit three names and from the three names the governor makes the appointment and provides other provisions in the case of a tie. This would simply provide that if there is a vacancy in any local office, that then under those circumstances it would be filled by the remaining members of the particular governing body on which that person is sitting; it expects the sheriff, assessor, clerk of district court, and other officials and would provide that if more than a year remains in the term of the office, then under those circumstances a special election would have to be called. It provides that in the case of the home rule charters which have a different method of filling the vacancy, then under the circumstances, these provisions would not be applicable. We have prepared and would offer a much shorter version of this particular section, which I think would cover all of the salient points and at the same time reduce the verbiage considerably.

Questions

Mr. A. Jackson Mr. Kean, did you not say that this section makes a slight change but isn't it true as I appreciate it and interpret the language that you are making a big change, because you are taking away from the governor the right to fill vacancies as it relates to local governmental units? Secondly, you are providing for the chairman of governing bodies to have two votes. Is that not true?

Mr. Kean We had...under the present law the vacancy is filled by the submission of three names to the governor...

Mr. A. Jackson That's right, but the vacancy is filled by the governor, isn't it?

Mr. Kean The vacancy is then filled by the designation of a successor by the governor from the three names who are submitted to him.

Mr. A. Jackson Yes, but under this provision you are...that authorizing the local governmental unit to fill a vacancy itself.

Mr. Kean That's correct.

Mr. A. Jackson So, that's more than a slight change. Is it not?

Mr. Kean Well, as I view it, the local governmental authority is simply itself filling the vacancy rather than submitting a panel of three names that the governor can select from.

Mr. A. Jackson Yes, sir, but I was simply trying to point out that...did you know that this is more than a slight change?

Mr. Kean Well, I guess it's a matter of how you look at it, Mr. Jackson.

Mr. Pugh Mr. Kean, I believe that there's a substantial number of cities in the State of Louisiana that are governed by three individuals, three elected individuals. Is that not true?

Mr. Kean There are several commission forms of government in Louisiana, I don't know how many, Mr. Pugh.

Mr. Pugh Well, I believe Monroe and some of the others, but let me ask you this basic question. Those that have three, in the event of one of those three dies, there is left two.

Mr. Kean That's correct.

Mr. Pugh Under the terms of this provision do I understand that the tie vote is broken by one person voting twice, so that one person can, in effect, place another person as an elected or in a capacity of an elected official of a city?

Mr. Kean We were trying to find a way, Mr. Pugh, to break the tie if that situation occurred and that was the manner in which we selected to do it.

Mr. Winchester Kean, how and who would determine that a vacancy existed?

Mr. Kean Well, the committee proposal provided that the vacancy occasioned by death, resignation or otherwise in the office.

Mr. Winchester Well, sometimes there's been questions when a person moves away and it's hard to determine whether it's a temporary removal to another part of the parish or another town or whether it's full-time moving away. We've had some problems in St. Mary Parish to determine whether a constable or a justice of the peace or someone of that sort was entitled to hold office and it was rather sticky as to who determined whether a vacancy existed.

Mr. Kean Well, I don't recall specific provisions, Mr. Winchester, but in many instances it provides that if they move out of a district in which they live, that under the circumstances, they vacate the office. Otherwise, it would simply be a question for the court to decide whether the vacancy did exist if there was some dispute concerning it—as for example, a temporary absence or a military absence. If my recollection in case of military absences, the court holds that is not a vacancy, but that would simply have to be a matter to be determined and otherwise as set forth in the section that was designed to relate to that kind of a vacancy occurring as distinguished from death or resignation.

Mr. Winchester Thank you.

Mr. Burson Mr. Kean, isn't it true that under the present constitutional provision for filling vacancies, the chairman votes twice with regard to the selection of the list of three names?

Mr. Kean That's correct. Under Article VII, Section 69, it provides "A tie vote on an appointment to be made by a municipal governing authority shall be broken by the mayor of the municipality

"...and it was decided by the governing body."

doubt that under the present setup that the governing body, be it, police jury, council, or school board is the only authority that can submit three names to the governor, is it?

That's

So, that really the committee proposal would do in the way of change would be not to remove the power of selecting one of the three individuals who would ultimately get the appointment, but in this case, they could choose the one rather than the three?

That's correct.

the amendment itself.

delete lines 18 through 32, both inclusive, in their entirety and on page 8, delete lines 1 through 32, both inclusive in their entirety and on page 9, delete lines 1 through 6 in their entirety and insert in lieu thereof the following:

Section 1. Except in the office of assessor, or as otherwise provided in this constitution, "here's the change--" or a home rule charter, "--insert or a home rule charter--" or as otherwise provided in this constitution or a home rule charter, the legislature shall provide a uniform method by which local government shall fill vacancies created other than by expiration of term of office."

Mr. Charpage. Mr. Chairman, ladies and gentlemen, I will say in five lines and as soon we provide for the replacement of the assessor when it so... is necessary, Style and Drafting can eliminate that line and we will say in four lines what the committee is going to say. I am going to say in five or two lines, four lines we will say in general the same words that were said in fifty-two lines. Now, I would suggest to you that if you are as sincere in your statements that many of you made that you want a short concise constitution, that you would seriously consider this amendment. I am going to say it does not say that all "vacancies created other than by expiration of term of office," in other words, when the term expires they have an election. This says that "the legislature shall provide a uniform method"--throughout the state--"by which the governor shall appoint the assessor." I am saying that the fifty-two lines go about saying exactly it's in a constitutional manner. At the present time, as it has been explained, the governor is given three names by the local governments and from that, he appoints one, but let it be understood that, in some instances, he can appoint three names; they also say who they want him to appoint. If they don't have a fat man, they tell him that, they want a lean man or thereabouts the other way. In other words, they spell out to him, but the only thing this does is if they want to appoint Joe Blow's cousin instead of the other guy, and they have to face up to the facts, and say "I did not want him." They can't put the blame on the governor or somebody else, they have to tell you the truth. They are going to put it squarely on their shoulders, and it does it in fairly simple terms. As many of you know, the committee has come up with shorter language. But the point I want to put out to you, is they did this only after being presented with the fact by the legislature would not be adopted. This assembly, I'll accept question.

Questions

Mr. Abraham Walter, I know that the intent is for the local governing authorities to fill these vacancies, but the method that the legislature might provide--the uniform method that they right provide--might be to say that the local government shall submit a list of ten names to the governor and the governor will make the appointment.

Mr. Champagne The local government specifically says "shall fill the vacancies." Now all of you, you know, hoping that what might happen and all of that, it says they "shall provide a uniform method by which local governments shall fill vacancies, that doesn't allow the government to do that, no

Mr. Abraham Well, this uniform method could it not, might state that they shall fill the vacancies in this manner and there may be ten appointments and then the governor will make the final selection, could it not?

Mr. Champagne: I don't think there's any chance that at all, but I want to remind you that legislators come up for election and that's how we have means of replacing them if they act irresponsibly. Up until now, I had not seen such irresponsibility and when these people bring up these questions, I think it's simply a matter of trying to excuse--and I know your is not--but I think I see so many excuses from this assembly, that I excuse not to vote for an amendment.

Q De Blieux Mr. Champagne, I noticed that you...
 A In this particular section, you left out the office
 of sheriff, clerk of court, coroner and so forth,
 but you made the exception insofar as assessor.
 Q Would you tell me why you made this exception for

Mr. Champagne: I thought I had explained that. The office of assessor has not yet been covered in the constitution; I would hope that the committee on which you and I are members would do so and that the other members of the committee would do so. I've checked with the sheriffs, the assessors and all...and the clerks of court and they had no objection to it as it so read. But in the case of assessor, he has not yet been provided for, I think. I think that the bill will be amended to provide in the Judiciary Article already. Sir, they have already been provided for

Q. Denn Mr. Champagne did you orally amend your amendment to say "except as provided in home rule charters the vacancies will be filled," etc.

Mr. Dennis: Would you consider, sir, withdrawing your amendment and taking that out, because I fear that you are now opening up the possibility of the vacancies of judicial offices being controlled by a home rule charter?

Mr. Champagne If the Chairman would permit, because actually the home rule sections are very specific about that and they provide on those sections. I need to discuss and discuss it as

¹⁰ See, e.g., the chairman and

among the top 100 authors in the 1980s, and the 1990s, with

what this conveys is that a good, simple rule is that
to the fullest extent possible, use `std::move`.

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

cancy that that means we're killing people.

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and not on a state level. I know that there is a great deal of objection to the length of the particular article on the filling of vacancies and the reason for that is not because of who fills the vacancy, but because of the fact that the committee thought it was appropriate that we set out the details as to when the elections should be conducted and so forth. However, in deference to the feeling of what appears to be the convention that they do not want such a lengthy provision, Mr. Kean will soon have an amendment which will provide for the filling of vacancies on a local level by the local governing authority, or in a case of school boards, by the school boards. If there is any question, for instance, with regard to Judge Dennis, the original provision which we have provides that the provisions of this section shall not apply to the office of Judge of any state, court of record, or district attorney—to make that perfectly clear that that particular office was not being affected and if the final Kean provision does not adequately take care of it, I'm sure that Mr. Kean and I will be glad to offer a provision which would be sure that it does not attempt to affect either the district attorney or any judgeship. I, therefore, urge that you reject this amendment and adopt the Kean amendment when it comes before you.

[Previous Question ordered. Record vote ordered. Amendment rejected: 12-6.
Motion to reconsider failed.]

Amendment

Mr. Poynter All right. Now there have been two versions of the Kean amendment passed out, and I'll try to guide you to the right one; it's the one in which Paragraph (A) simply has the two words "by law." The other one has about five or six words on the line of Paragraph (A), but the last line of this one--of Paragraph (A) of this one--reads simply "by law."

Amendment No. 1. On page 7, delete lines 19 through 32, both inclusive, in their entirety and on page 8, delete lines 1 through 32, both inclusive, in their entirety and on page 9, delete lines 1 and note that correction--1 through 4, not 1 through 6...Never mind, we are going to make it 1 through 6.

Explanation

Mr. Kean Mr. Chairman, fellow delegates, this proposed amendment carries out the concept of the committee proposal in that it provides for the filling of the vacancy by the local governing authority of the local governmental subdivision involved, or the parish or city school district in the case of the school board. It would provide that that vacancy would be filled by the local governing authority, or the governing authority of the school district. It is filled by an election as provided by law, which would mean that the vacancy would be filled by the local governmental unit or the agency, but it would be filled by an election which would have to be carried out in accordance with law adopted by the legislature.

The second part of it simply provides that this would otherwise apply to all local governmental subdivisions unless otherwise provided by the home rule charter or home rule plan of government of the affected local governmental subdivision. There is a slight variation between the manner in which you do this, generally, in the case of East Baton Rouge, with respect to a plan of government. For that reason, this particular Section (B) was left in.

Under the circumstances, it's a much shorter version of what was presented by the committee. I think it still carries out the initial concept of the committee giving the local governing authorities the right to fill the vacancy, but leaving the details so far as the election, etc., to the legislature.

Questions

Mr. Avant Gordon, believe me, this is a friendly question. I'm simply seeking information. But under your amendment here, if there was a vacancy, say, in the East Baton Rouge Parish School Board, who would fill it--the parish council or the school board?

Mr. Kean The school board.

Mr. Avant The school board would fill it.

Mr. Kean Right.

The original, Jack, the original one that was drafted had an error in it in that it left out "school districts," and I want to make it clear that the school board did make that appointment.

Mr. Pugh What is the purpose for putting the language in, "except for the office of assessor?"

Mr. Kean Because the assessor has not yet been considered, insofar as the filling of that vacancy is concerned, and we wanted to leave it open for different treatment than what's provided here.

Mr. Pugh Well, how are we leaving it open if we say, "except as...except for the office of assessor?" That's not leaving it open, is it?

Mr. Kean We are saying, "except as otherwise provided in this constitution, and except for the office of assessor, a vacancy in any local office filled," etc. Under those circumstances, as I read it, it means that we are going to have to deal with the manner in which we filled the vacancy in the assessor's office at some point in this constitution.

Mr. Pugh I wholeheartedly agree with that. But we...excepting him here, why can't we just say, "except as otherwise provided in this constitution, a vacancy in any local office," because if we don't provide for him anywhere else, we sure ain't providing for him here either.

Mr. Kean Well, this was done out of respect for my dear friends, the assessors, who were not, up to this point, otherwise provided for in the constitution. I simply wanted to make it clear that we were not endeavoring, in this section, to deal with a vacancy in the office of the assessor.

Mr. Rayburn Mr. Kean, we plan in our committee to provide for vacancies for assessor, but in the event we do, then the constitution will tell how it should be provided. Do you think it's necessary to leave the language in here for assessor?

Mr. Kean I would think under those circumstances, Senator, that perhaps in Style and Drafting, we could simply take out this additional language. We were simply trying to do it out of an abundance of precaution. We didn't want the assessors mad at us.

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, I rise, basically, to point up that this particular amendment fills a loophole in the Judiciary Committee Proposal. New Orleans has a specific... special problem. The boundaries of the city of New Orleans are the same as the boundaries of the parish of Orleans. If you will read Mr. Kean's amendment, you will note that "a vacancy in any local office filled by election wholly within the boundaries of a local governmental subdivision, shall be filled," in the way as provided in Mr. Kean's amendment, would be filled by the governing authority. Now, in our Judiciary Committee Proposal, we did not provide for a method of filling the offices in Orleans Parish, such as the recorder of mortgages, the recorder of conveyances...the register of conveyances, those specific offices,

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the clerk is [redacted] This provision would, City Court, constables, etc. This provision would, in effect, take care of that one loophole. Whether we want to do that or not, I don't know, but it would take care of that one specific situation.

[Redacted]
[Redacted]
[Redacted] tabled. Previous Question ordered on [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
1973.]

56th Days Proceedings—September 28, 1973

Friday, September 28, 1973

ROLL CALL

[87 delegates present and a quorum.]

PRAYER

Mr. DeBlieux Our Heavenly Father, we thank Thee once again for this day, for the privilege of gathering here to be about Thy service. We ask You to guide us in our thoughts this day, that what we do may be to Your desires and wishes. We ask that You imbue each one of us with a sense of charity and responsibility so that we may be charitable in our words and our actions, thoughtful in our deliberations that they may redound to Thy service. We ask all this in Jesus' name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Reading of the Section

Mr. Poynter "Section 16. Legislation Increasing Financial Burden of Political Subdivisions; Local Approval

Section 16. No law requiring an increase in expenditures or a deduction from the funds of a political subdivision for salaries of local public officials or for wages, hours, working conditions, pension and retirement benefits, vacation or sick leave benefits of political subdivision employees, or an increase and commission of or for a political subdivision officers, except a law providing for civil service minimum wages, working conditions, and retirement benefits for retirement...for firemen and policemen, shall have effect until approved by ordinance enacted by the governing authority of the political subdivision affected thereby or until the legislature appropriates or for the affected political subdivision for that purpose and only to the extent and amount that such funds are provided."

Explanation

Mr. D'Gerolamo Mr. Speaker, fellow delegates, this Section 16 was drafted by the committee with the intent of a better coordination between local and state officials whereby the legislature would be delegating and appropriating money to municipalities and to parishes for various services with regards to the expenditures and how this money is to be expended. The committee had quite a discussion or discussion. I should say, on this particular section. I think the intent of Section 16 came up several times in this proposal so far.

We hope that the monies allocated to the various municipalities and parishes by the legislature, be given to them to spend the best way that they feel it should be spent with an exception. Now, we've had this exception and we had testimony from the police jurors, from municipalities, from firemen, from policemen, and the exception says "except firemen and policemen."

Our committee, in fairness to all of the committee, after much debate on this particular section of it, voted. I should say was eight to seven in favor of exempting firemen and policemen from this section, the reason being, and I think this is where the crux of the matter is going to come from the objectors to this section, and we do have in all fairness to you, some members of our committee who strongly objected to the...not to the entire section, but to this exception. I, as a foster of this exception, believe, as a former mayor of a city, that the objectors are making a mountain out of a molehill and I'll tell you why. Now that we had a one man, one unit rule form of government here in the State of Louisiana, I represent the same people in my city as the mayor and board of aldermen

do as a state Representative. I am a state Representative. And certainly, if the policemen or firemen, went to the mayor and board of aldermen in my city and said we need a raise, we want a raise, or we need better retirement system, and my mayor and council said "we just do not have the money and we cannot give it to you," and these men come to the legislature, my next duty to the city and to the people, and to the firemen or policemen, is to go back to the governing authority and say, "Gentlemen, what is the matter?" If they cannot, if they do show me that they do not have enough money, certainly I, or no other legislator would vote to impose something on a municipality that would ruin it. I don't believe this legislature, the makeup of our current legislative system, would do this. I certainly do believe, though, that if our local governing authorities are spending this money and building monuments for themselves to perpetuate themselves in office, and getting these policemen and firemen a three hundred dollar a month salary to live on, then something should be done. Certainly we say a policeman and a fireman should not strike because they are the salt of a community. As a former mayor, I can tell you this. They are the backbone of your community.

Whenever a community is in trouble, whenever a city council is in trouble, they call out the police department and the fire department. These men are specialized men and certainly, I do not want to discredit any other department of any city. They also should be equally recognized. But I'll tell you this, that in a city, in a parish, if your truck drivers, three or four of your truck drivers don't come out on your road department, you go to another department and get them. If your drainage department doesn't show up, you go to another department and get them. But let's say that fire department drivers don't show up one day, or that police department don't show up one day, and see where you are. These men, would you believe, these men, some of them, are working risking their lives day and night for the people of the State of Louisiana and many of them are getting as low as three hundred and fifty and four hundred dollars a month. This is why I have a passion for...compassion for policemen and firemen. These men are dedicated men. I venture to say there are not many parishes or cities in the State of Louisiana who could operate a fire department without an auxiliary. The volunteer fire departments throughout the State of Louisiana are carrying the burden of fire fighting, assisting your paid drivers in many of the communities that cannot support a full paid fire department. These men volunteer their services, volunteer their lives, the danger to go out.

The policemen, likewise, we have police auxiliaries throughout the state. I don't know of an auxiliary garbage department, or an auxiliary road department, or auxiliary sewer department. I don't know of any of these in my sixteen years of public life. This is the reason why I, and some of the members of the committee, urge you to keep the proposal as the committee has it in our Section...in our Article 17. Ladies and gentlemen, this is very, very important to the men and women who take care of our community. Would you believe that there are parishes, and I know of one for sure, that has no retirement, no pension, nothing for their fire department?

I had a lady come to my office, her husband was a paid fireman for twelve years, on a paid fire department. He came off from work one night the next morning he died of a heart attack. She has five children, pays a hundred and twenty dollars a month note on her house, and for twelve years, the men there have been trying to get a retirement system or a pension plan, and they keep telling them, "We are working on it, we are working on it." Nothing has happened. This man died, the lady called the department to find out what financial relief they can give her. In the policy they had, they had a two thousand dollar burial policy, period. She gets nothing for the services that her husband has put in this fire department for twelve years. No child support, no widow benefits. Nothing.

should have some say-so to help these people. They cannot strike, you tell them. "No, you cannot strike because it would completely wreck a community if they struck." Grant it. But certainly if these men are turned down by their local governing authorities, where do they go? I urge you to vote for this, and I'll answer any questions, Mr. Chairman.

Questions

Mr. Payburn Eddie, in the event that the legislature saw fit to maybe raise someone's salary, could they, under this language, if this particular municipality or governing body of a parish was receiving revenue funds, revenue-sharing funds from the legislature, could, or could not the legislature dedicate these funds to take care of the added cost that they might have incurred by passing a certain law?

Mr. d'Gerolamo Certainly, Senator. This is what I'm afraid of, Senator. You'll have the legislature earmarking funds to the parishes.

Mr. Rayburn Any of the funds that we now appropriate for municipalities in the future, say like cigarette funds which they all get a share of, could we not earmark that along at the same time we made the appropriation and say the funds for this added cost will be deducted from the amount of cigarette tax the legislature is now providing for you?

Mr. d'Gerolamo Yes, Senator. I think that's a possibility. Is there any other question?

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Robinson and Mrs. Corne], on page 9 at the end of line 21, add the following:

"Nothing in this section shall be construed as applying to parish and municipal school boards."

Explanation

Mr. Robinson Mr. Chairman and delegates, I've been informed that perhaps school boards are not covered by this particular section in any event. But if that's the case, I see that there...see no reason why there should be objection to my proposed amendment.

Now I know that on the surface it sounds immaterially fair and just to put into the constitution a provision which requires the state to fund fully anything which the state says shall be done by a local government in the fields that are specified in this particular section.

Frankly, it appeals to me because, obviously, it is foolish and self-defeating for public school employees, for example, assuming that this applies to school boards, to try to saddle a school board with costs that the board can't pay. Since I am for wedded, monogamous motherhood, and a lot of other good things, ergo, I suppose, I ought to be for this. But I am not, and for what I believe to be very good reasons.

Public school finance in Louisiana is based on a local school system to pay for schools is measured by a formula. This standard cost is also determined by a formula. The state then funds the difference between the capacity of that particular school board to pay for education and the cost of the standard minimum programs. Now, all of this is not written down in stone tablets, of course. The legislature, heretofore, anyway, has a final say as to how much it will appropriate, and on what basis.

Now most of the expenditures in public elementary and secondary education for current operations

are for those purposes in Section 16, specifically for salaries, wages, hours, working conditions and the like. Therefore, Section 16 applies to most of the public school budgets. Most of the money for public school operations is provided by the legislature. Some school systems receive as much as ninety-five percent of their operational funds from the state. So, keep in mind that what is involved in this Section 16 is, first, that an entity which receives as much as ninety, or ninety-five percent of its money from the legislature can veto an action of that same legislature if its five percent share is affected even five cents worth, even though there may be good reason why the legislature wanted to change the ground rules to provide that they should be deducted or docked some of that five cents worth.

No two school systems receive the same percentage of state support, incidentally, except by accident. Now the basic formula under which the amount of state support is computed for each pupil is a very important factor in Louisiana public school finance. The formula is one of the best of that state support in a given parish, and the degree of participation of each parish in the state funding program relative to other parishes. The formula is changed periodically, for good reason, and this involves deductions from the funds of the local school systems. Our school system of school finance, incidentally, is one of the best in the United States. But it's a long way from perfect. It is also very complex and understood by very few people. Now there are laws in this state which guarantee certain uniform fringe benefits to teachers and to other school employees, and most of these have been on the statute books for many years. As an example, there are state laws which provide for sick leave and sabbatical leave for teachers. The cost of these particular benefits may account for as much as say, two percent of the total school budget, maybe less. There is no direct appropriation by the legislature for these particular costs. But there is a state appropriation to each school board for these costs, and this item now amounts to over forty million dollars in the total for all school systems. The state has, over the years, taken over most of the cost of the instructional cost of the schools. In fact, the state now pays the entire cost of all of the teachers who are allowed in the minimum foundation program up to the state minimum salary schedule. The state appropriation of this now totals three hundred million dollars and more annually, plus additional millions for bus operators.

Now I have participated in the writing, or I have written virtually every state law for teachers and school employees for the last two decades. Everyone has seen that if the salaries of funds appropriated by the legislature are insufficient to pay the schedule, then the schedules are reduced proportionately. The amount of money involved for sixty thousand school employees in a salary schedule is so great that there is no way that such a cost could be unloaded upon the local school boards, if anyone had the dispositions to do so.

Now, this provision, in Section 16, is totally unsuited to do what it apparently intends to do in the field of public school finance. But I tell you what it will do. You pass this, and if it is applicable to school boards, I'll give you a gift, a ring, a bonded guarantee that you will have the effective revision of the school finance system of this state no matter how much it may cost.

I see any substantial revision in the manner of state funds, or state support of public schools, in effect. Now, I want to point out just a few things. The legislature has a final say as to how much it will appropriate, and on what basis. Now most of the expenditures in public elementary and secondary education for current operations

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to be necessary in the minimum foundation program. The additional teachers are employed by the school systems, in most instances, out of their local funds. But these, too, must be paid a state minimum salary schedule. There isn't any tagging of teachers as to who is paid for by the state and who is not. Some school boards supplement these salaries from their local school funds such as local taxes. Now this is an example of our system of shared costs and local costs. Now let us suppose that the legislature should implement the cost-of-living salary law that's now on the books, and that the governor signs this situation...signs this implementation...happy day. As I read this provision, the local school board could negate the effect of this appropriation at least in part for some teachers and find all in his parish, because the law requires that all teachers be paid according to a minimum schedule and their costs are increased for the comparatively small number of teachers which the state does not pay for, and has no intention of paying for under the present plan for distributing aid to the schools.

Now take the question of retirement legislation. For many years the legislature has appropriated state funds for employees' contributions to the retirement system, although the retirement law plainly stated that this is the responsibility of the local school boards. The school boards couldn't do it, so the state did it. Now see legislature, in 1964, authorized the school boards to levy sales taxes for salaries and other purposes. These sales taxes are not charged against the school board when the state computes the ability of that school system to pay for the minimum program. That's in the sales tax laws. Most of the school boards did levy the local school taxes and they used these funds to supplement teachers salaries locally. At the same time, this raised the obligations of the state on the extra salaries for retirement purposes. So the legislature passed a law saying that the school boards would have to pay the cost of retirement on the salary compensation above the state minimum, which I think they were entirely justified in doing. But under this particular provision, I don't think that the legislature could have enforced such a law because it would have had to have the approval of the local school boards.

Sick leave and sabbatical leave are involved in this. When you raise salaries, you raise slightly the cost of the school boards for every day of sick leave. Although the state puts up about forty million dollars for unspecified other costs, the school board could say, "Well, I didn't get any extra money. I don't get enough money to pay for the sick leave costs that are involved in this new schedule. Therefore, we are going to cut this new state schedule down to where we can live." Do we expect that a school board will be able to set aside a state minimum salary law on account of these incidental costs, quit the state plan of funding assigns to these school boards in the first place? The same kinds of problems are involved in all kinds of legislation. It's not certain, incidentally, in many cases, what the net cost will be of legislation that is proposed in certain of these fields. Now when the state puts up as much as ninety percent or more of the money for local schools, Section 16 just means that nothing can be done to change that ninety percent, or whatever that percentage may be in a given parish, except in two ways; by increasing the percentage of state support, or by abandoning the policy of enacting uniform laws for wages and benefits. This thing creates a one-way money pipeline. I believe that it will freeze the mechanics of the minimum foundation school program if it applies to school boards, I think it would prevent the proper adjustment or perfection of the state minimum foundation school program. In consideration of the cost structure of our school system, I think it could destroy the equitable application of welfare laws to school employees and effectively prevent the enactment of additional laws if these involve any indirect costs to school boards whatever, even as the state might be increasing its state support of the public

school system in other areas.

I hope you will adopt the amendment.

Questions

Mr. Roemer Mr. Robinson, is it your interpretation that the committee in this Section 16, wanted to include the school boards and you are trying to differentiate that point? Or is it your feeling they wanted to exclude school boards, and you are trying to make that specific.

Mr. Robinson Frankly, Mr. Roemer, I don't think the committee probably had school boards in mind at all. It's my feeling, however, that the definitions that are provided in this particular proposal dealing with political subdivisions, may include school boards. If it does include school boards, I think the inclusion will have the effects which are outlined.

Mr. Roemer All right. Do you know, could you talk us in it your understanding that the committee is going to oppose or propose your amendment, or take no position on it?

Mr. Robinson I have no idea. Mr. D'Geronimo says he has no objection, in which case, unless the...it depends on the convention, then, whether they've got objections.

Mr. Pugh Mr. Robinson, I've noticed that you've voted substantially, which is fine, for home rule right along. Don't you think this is a departure from home rule to tell a school board that they can't make a determination about these teachers within their own local subdivision?

Mr. Robinson I'm not sure I voted for home rule, and I'm quite sure that I did not, generally speaking, vote for home rule as it has been adopted by this convention.

Mr. Pugh Oh, you did not? I apologize to suggest you had. I was just looking at your record from yesterday.

But I ask you, is this not a departure from home rule...your amendment?

Mr. Robinson Well, no, sir, as I said, I think that if you fully comprehend the shared cost structure for school finance in Louisiana, what this does, far more than what is intended to be done, is to foul up any future changes in the state minimum foundation program, or the system of state school funding. That's what I think it does.

Mr. Stinson Mr. Robinson, if you would follow through on home rule that Mr. Pugh seemed to be intimating, then it would be each school district would have to have its own retirement system, its own pay schedule, and everything that the state, through the many years, have worked to better our school system. Isn't that correct?

Mr. Robinson Over a per...a long period of time, Mr. Stinson, I think that might occur. I don't think the immediate effect of this would be that great because I don't know of that many benefit laws that anybody's attempted to pass that increase the cost of school boards drastically.

The only period of time the way this would operate, where all the decisions would be made in such a way as to inhibit the addition of the changing in the form there and all, it would all work out to where the only thing that would happen would be increasing...increase the percentage of state support in every parish.

Mr. Stinson Now, Mr. Robinson, you didn't answer my question.

When we talk about home rule, isn't it a fact that we can't have home rule in our parish school systems due to the fact that our retirement is statewide, and our pay schedule is statewide and everything. We can't have home rule as far as the

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teachers, can we? ...the tenure and so forth.

Mr. Robinson Well, so far as the funding of education, I would have to agree with when as much as ninety-five percent of the money comes from the state, I don't see how home rule has that much to

Mr. Stinson Not only the teachers, but all other employees and school bus operators.

Mr. Robinson I agree with you.

Mr. Stinson All right, I agree it controlled by

Further Discussion

Mrs. Corne Mr. Chairman, I think that Mr. Robinson has clarified this point very, very well. I do believe that all of the delegates understand just exactly the position of the local school board and of the state in funding education and having equitable distribution of funds for public education. I would, therefore, at this time, move the question.

50-10

Mr. Poynter Amendment proposed by Delegate Lennox. Amendment No. 1, on page 9, line 14, immediately after the word "offices", delete the punctuation and partial word "x," and delete lines 15 and 16 in their entirety and at the beginning of line 17, delete the partial word and punctuation "men,".

Explanation

Mr. Lennox Mr. Chairman, fellow delegates, first I'd like to address myself to the fact that there are a score or more coauthors to this particular amendment, and they are, briefly: Delegates Denney, Sandoz, Casey, Sutherland, Riecke, Thistlethwaite, Hernandez, Grier, Jasper Smith, Perkins, Helne, Drew, Cervigon, McDaniel, Elkins, Schmitt, Kilbourne, Kean, Miller, Arnette, Staggs, Bollinger, Juneau, Duval, Lanier, Wattigny, Burson, Gauthier and Chate-laine.

Mr. Chairman, fellow delegates, Section 16 is really the gut section that has to do with the fact of whether or not home rule is going to prevail in the work of this convention. Section 16 is indeed an extremely good section until it gets to lines 15 and 16. Thereafter, it is equally good. If you don't think home rule is an issue back home, then you simply haven't read your local newspaper or heard television or radio in your own home area. Now, I've had an opportunity to read newspapers from all over the state and to at least view the comments of editorial people and the electronic media in Baton Rouge and New Orleans. I can tell you that home rule is the hottest issue that has come before this convention to date, and it may well be the hottest issue to come throughout our deliberations. Now, let me briefly explain to you what happens on lines 15 and 16 that guts the whole essence of Section 16. The exceptions would provide any law creating civil service. Now, you clerks of court and sheriffs and assessors better take particular note of this, because your deputy assessors and your deputy clerks might find themselves in a position where they are being paid less than what regulates their hours, their working conditions, and their salaries, and come back and demand that their salaries and working conditions be raised. The second exception is any law involving minimum wages. The third, any law involving working conditions. Certainly these are self-explanatory. Finally, any law involving minimum wages. Finally, any law involving minimum wages.

date a parish or a local government entity to provide additional salaries or retirement benefits beyond that which that local government body feels it's capable of funding, without doing one of two things. The first is to provide the money, and the second is to give the local governing body the authority to veto that action taken by the legislature. Now, if you're read the last few lines of Section 16, you'll see the real gut of that section. It's a home rule section in every manner, shape and form until it gets to line 15 and through line 16 where that just takes the very guts out of the whole thing.

One of the selling points brought to many of you who live in unincorporated areas for this particular...for the inclusion of the exception...is the fact that your fire department is a volunteer fire department, and this is not going to bob up and bite you in the back. Well, that may be the case today; it may be the case next week; it may even be the case next year. But let me tell you, as Louisiana grows and the suburban areas grow into the urban areas, your fire and police departments, where they're not salaried now, will in the next decade be salaried, and this problem is going to be looking you square in the face. The same people are going to be hovering over the legislature to mandate wages, conditions of employment, and other benefits that you can't pay. Then where do you go? Back to the legislature? I don't think there's a chance. You'll be looking down the same gun barrel that happens to be the case with the municipalities that are faced with the situation today. If a failure to adopt this amendment would shortly negate a score or more collective bargaining agreements, which I assume have been negotiated in good faith between fire and police unions and local political subdivisions. Now, there's been some propaganda placed out all over the state that I am an antagonist towards loyal, faithful, honest police and fire personnel. I can submit to you only the record on my performance in attempting to get better benefits, pay benefits, better retirement benefits for fire and police personnel in my own parish over the past twenty years speaks best for itself. I have been one of the originators of a group of businessmen and professionals who set up with the police officers go to school and get a degree in criminology, which makes everyone of them, black and white alike, a potential superintendent of the New Orleans Police Department with that type of education. Now, I am not an antagonist to these people. I simply say to you that if home rule does not prevail, then you're talking about something that people in cities and in the urban areas will not be able to live with if this exception is not...if this amendment is not adopted, and these exceptions are not deleted. Now, let me make one thing abundantly clear. I am for honest, responsible, reliable policemen and firemen, and again I say to you, my record speaks best for itself. But I am equally behind fiscal responsibility in the area of government at every level and including municipalities. Let me submit one more thought to you. You're going to see this particular proposition, these exceptions, at least twice if not three times more before you go home in January. When the civil service proposal comes before you at some later moment, you're going to see these exceptions brought back before you all over again, whether or not police and firemen should be exempted, and whether or not the legislature of this state should have the authority to mandate local government to provide benefits for any employee without providing the money or giving local government some voice in that decision.

Mr. Chairman, I would like to see the record on the

Record Book

Mr. Chairman, the record book is something that I have been talking about for some time. I have been talking about it for some time. I have been talking about it for some time.

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know is would your amendment affect the present equities that firemen have in their retirement system?

Mr. Lennox Mrs. Corne, I've heard very little of what you've said up to now. Let Reverend Stovall do what he does best—work on that microphone and we'll see...

Mrs. Corne My question is how would this amendment affect the present equity that firemen and policemen have in their retirement system?

Mr. Lennox It's my appreciation that it would have absolutely no effect on any benefits that accrue to firemen and policemen to this moment and to the very moment that this constitution would be adopted by the voters of this state. My opinion on that is backed up by some of the better legal minds on the floor.

Mrs. Corne Also, I have another question for you. Are firemen and policemen ever asked to go out of their own municipality into the parish system or into maybe another parish to help out in fires or in police protection.

Mr. Lennox I am certain that that is the case. I know of instances in my own parish where it has occurred, where there has been cooperation between Jefferson and Orleans on the one hand, or St. Bernard and Orleans on the one hand in fighting catastrophic situations, and I think they work well together, or at least that's been my observation.

Mrs. Corne Thank you, sir.

Mr. Weiss Delegate Lennox, it's my understanding that the state legislators provide rural areas that have difficulty in supplementing the teachers' pay, with sufficient funds to make education quality, within these poverty-stricken parishes. Now, you had made the statement that urban areas cannot live with this amendment. Don't you think that our state legislators will recognize this, and if necessary supplement any firemen and police funds or moneys that are necessary in these urban areas, if they are really required to maintain quality fire and police protection?

Mr. Lennox Dr. Weiss, I can only answer that question based on what I know past performance to have been, and the city of New Orleans is now looking down the gun barrel of a bill placed before it on the part of its fire fighters for something that's estimated to be 9.2 million dollars, which resulted from an act of the legislature which mandated that the city of New Orleans give to fire personnel only, not the sanitation workers or police personnel, or to other civil servants, but to fire personnel only, to give to them a supplemental pay boost of two percent over and above all the raises the city gave its other employees, including fire personnel. Now, that's been the cost of that particular legislation. Incidentally, no funds were provided by the legislature to fund that increase. The cost is estimated from a low of 3.7 million that I've heard on the part of the proponents of this exception to as high as 9.2 million which happens to be the estimate of the city administration.

Mr. Weiss Do you think we should look to the mistakes of the past, and therefore benefit by them, and pass this section since it is an improvement on that which has happened in the past?

Mr. Lennox Dr. Weiss, I've got to tell you I love the section, but I'll never vote for it with lines 15 and 16 in there. It's fiscal irresponsibility of the worst kind.

Further Discussion

Mr. Smith Mr. Chairman, fellow delegates, ... Gentlemen, I'm one of the coauthors of this amendment.

Of course, I'm in favor of it. I think it's a fine amendment. I hope that you will vote for it today. I hope that when I get through the few remarks that I have that it maybe will in some way influence you. The reason that I take time today to speak briefly is the fact that I'm a great believer in home rule, ... having had a deep feeling for this all during my political career for the last thirty years. I've served in the state legislature for four terms. During my time there I always voted for home rule for local and parochial government. My record will show that. I've been on many times, so I am very familiar with this phase on the state level. I've been a town attorney for over thirty-nine years; I'm now in my fortieth year, in a small community. There's other lawyers there. I used to be the best lawyer in this town, but now we have several more. So I feel that I am very familiar with the phases of local government, and particularly home rule as far as the local government is concerned. During my terms in the legislature of sixteen years, I consistently voted for home rule for local and parochial government. I opposed and voted against bills that had for its purpose mandating cities and towns to raise wages of firemen and policemen without furnishing the funds to do so. I can assure you that the matter is not anything new to me. I've always been for home rule, and I hope today that you will be. I am for this amendment one hundred percent, because if it is not passed, it will keep us from locking into the state constitution a matter of allowing the legislature in the future to force local government to raise wages of two segments of its employees without appropriating the money for that purpose. The proposal of the committee is not just nor is it equitable. The proposal of the committee in my opinion is not just nor equitable nor reasonable for several reasons which I will point out. First, its concept is certainly not home rule by any stretch of the imagination. It's only the firemen and policemen in a local subdivision are forced to be raised, how about the numerous other employees of the town? The average cities and towns have people working in capacities of water and sewerage maintenance, garbage hauling, street work, electrical maintenance when the towns have their own utilities, and many other capacities too numerous to mention. Some of these particular jobs are hazardous... just as hazardous as firemen and policemen. I sincerely feel that all employees of a local subdivision should have equal treatment in matters of wages and hours and one class should not be preferred over another class. I want it fully understood that I am for firemen and policemen. I have helped them on numerous occasions when I was in the legislature. Most of them are doing an excellent job. However, we have many other fine and dedicated city employees who are also deserving of help, but who may not be as well organized and unionized as firemen and policemen. However, I say to you most sincerely and conscientiously that if you truly believe in home rule as you say you do, you'll vote for this amendment today. We should not put such things as this in our new constitution. ... It is not just; it is not equitable. I feel like if this is put in, that we're going to have a hard time passing this constitution. As I told you yesterday, on many occasions, I am only interested in writing a good constitution. I'm not seeking political positions. I'm not trying to be popular, but I hope that you all will go along with me and write a constitution that will be fair and just and equitable in all respects. Gentlemen, let's keep real home rule in there, and give the towns and the communities a chance to raise their own employees, take care of their own business, and not have to come to the legislature with their hands out and beg them for things. I don't feel like we should tell the towns and the cities to raise the firemen and policemen without furnishing the funds to do it. They never do that. In fact I don't think even if they furnish the funds, it should be done. I hope that you'll vote for this amendment.

Thank you.

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Mr. Segura There are many municipalities, unlike New Orleans, who probably are not covered by the civil service law, because that has not come before the constitution yet...

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, we have heard a great deal of rhetoric today, and I am sure we will hear more about the value of fire and police protection. This begs the question. Certainly, I yield to no man in working for better police and fire protection on the local level. But all of the arguments made by the opponents of this amendment—and I support this amendment by the way, so let there be no mistake about that—all of the arguments of the opponents of this amendment rest on the assumption that local officials will not do their duty. That assumption is not borne out in fact. It rests upon the belief that the central government in Baton Rouge can do a better job of running the municipal government in the Point, or any other municipalities in the state than the elected officials there. I don't know anything that will get an elected official beat any faster than the lack of good police and fire protection. So let's put that issue aside. It comes down to a question of how are we going to provide this? The proposers of this amendment, of whom I am one, believe that this is a matter of local priority. The money, after all, must come from somewhere. Now, I'm going to tell you about an actual experience. I served on a citizens' committee in the city of Eunice the last time the legislature mandated this raise. We had to cut out the summer recreation program for the children of our city for one year in order to pay for that increase. We also had to raise the garbage and sewerage rates for every homeowner in the city. This is a form of indirect taxation, a tax that was levied on our city by the State Legislature. I submit to you that every homeowner, every old lady who's getting a real security check, and just getting by had a two or three percent increase in the cost of running their home per month to pay a salary increase mandated by the legislature. This is simply not the way to conduct business. Now, Mr. Jackson has an amendment to include sanitation workers in here, and I want to tell you if you're going to let the legislature set the salaries of firemen and policemen, you'd just as well let them set the salaries of the garbage truck workers too. You can follow the same logic. I don't think that garbage collection is any less vital a city service than these other city services. If we're going to let the state legislature set the salaries of the garbage workers, well let's just abolish the cities and create a Louisiana Garbage Commission to run garbage collection throughout the state. That is the ultimate, logical extension of this argument, and it makes just about that much sense. Now, finally I want to point out to you that the committee proposal, if you eliminate exceptions for firemen and policemen, will not prevent the legislature from providing a raise for workers; but what it will call for is that either the municipality will have to approve the raise or the legislature will have to appropriate money to pay it. Put your money where your mouth is. It's easy to vote salary increases when you certainly have to put up the money, but it's hard on the local level when you've got to put an increase in garbage and sewerage rates on every homeowner in the village or in the municipality, or when you have to cut out the summer recreation program to pay the raise. From what I've seen of the ability of the policemen and the firemen to lobby, they certainly have the funds to lobby just as the mayors and the police jury people are lobbying, from what I've seen of their effectiveness I have no doubts that they will be able to convince the legislature to appropriate money for a salary increase, if that salary increase is that necessary and if it can't be provided locally. But it all boils down to the fact, doesn't it, that it's a lot easier to lobby a salary increase in one place here in Baton Rouge

than it is to have to go out into all the municipalities across the state and bargain in each one. So let's boil it down to the real issue, and that's what it is.

Further Discussion

Mr. Stinson Mr. Chairman, fellow members of the convention, this argument, as a number have said, has been going on for years and years and years and will continue going on for years in the future. I'm opposed to this amendment. When they get up here and say "Well, you're supposed to furnish money to help pay the salaries, and especially from New Orleans,"... if we gave New Orleans any more favors than we have in the past, then the legislature would give them the whole state. We've given them money for every purpose. We've given them ten million dollars to vote for a tax, extra. But I don't want to get on New Orleans. I usually vote with them. But I want to tell you this is another feature that we cannot depend on home rule. We're in the city of Baton Rouge. Suppose you got robbed, and they say, "Well, you don't live in Baton Rouge,"... the police force, "We can't help you; we're only taking care of the Baton Rouge citizens. They are the only ones that pay the taxes." Suppose your car caught on fire and the firemen said, "You're from Bossier Parish. I'm not going to put your fire out." Coming down here I pass through twenty-five or thirty towns and cities. I'm an outsider. I'm a visitor, but I'm entitled to the protection. It's a statewide protection and security that the citizens of Louisiana are entitled to. Now, they say that we've got to help the cities, local government. We help them. The issue's come up time after time. I know one time in particular we had a local bill in a city in my district. The mayor says we can't add those extra personnel. If we do, we'll have to fire thirteen, cut down on the salaries. He convinced me that he was telling the truth. The bill was defeated. The local government, we hear, the mayor gave them more than they were asking for, and he said he couldn't do it, but he did it. He left me out on a limb and chopped the limb off. That's what's going to happen to you if you depend on home rule and say mayors are going to look out for 'em. Well, I've dealt with many a mayor through my lifetime, and they're not all as conscientious as you think they are. They think some other monument of show is better than a salary, but as it's been brought out by the others, these policemen and firemen do not work just in the municipalities. They help outside in cases of riots, emergencies, fires outside of the city limits. They don't run up there and say "Oh, you're a block out of the city. We can't go out and help you. We can't do that." So, I say it is a matter statewide. We have got to have the best qualified. You might say, well, this doesn't assure the best qualified... at least the indigent pay will be, and you can then through your civil service requirements get better qualified people. Now more than ever, first is our life and our health and our liberty, and these three are concerned with that. You know you've got to have some assurance of security. It's worse now than ever before. But isn't it a fine feeling to be in a city, and you hear the fire alarm at midnight and say, "Well, the fire department will take care of it, even though it might be the committee or my business." It was debated by all the sides, sure, before that committee, and they in their wisdom recommended this. Let's leave it as it is. This is a concern of all the citizens of the state. From my parish, they're just as concerned as those in Baton Rouge. The people from my parish come to Baton Rouge for matters of government, and football games and such. They want security and courtesy extended them by the police and firemen of this city, and

kingdom you have to get a passport to go into. We have one state and we're entitled, and should get the protection, and this is the only way we're going to, is leave this as recommended by the committee. I urge you, let's defeat this amendment and leave it like it is. I don't know what's going to happen from this amendment—the legislature, the retirement, the civil service that they have in the different cities. We don't know what's going to happen. So let's let these people be secure in their employment, which is the safety and security of our citizens statewide and not in a home rule area.

Further Discussion

Mr. Stagg. Mr. Chairman and fellow delegates, I rise in support of the Lennox amendment. To my regret I cannot speak with the empathy and with the simple eloquence and with the great dignity of Mr. Landry and Mr. Willis. I cannot speak with this podium with the elegant verbiage and mellifluous phrases of our esteemed Mr. Willis. But I can, I think, in the time allotted to me, give you some exceptionally good reasons to vote for the Lennox amendment. Mr. D'Gerolamo, when he was at the microphone explaining this section, said that he had compassion for firemen and policemen, and so do I. The answer, I think, lies in the work to be done in the localities, the cities and the municipalities, by you delegates and other public-spirited citizens, as you have proved to be by your duties to this convention. When I was in the local Junior Chamber of Commerce twenty years ago, I found that the policemen of the city of Shreveport had to buy their own pistol, buy their own belt and holster, buy their own uniform, and their only training consisted of riding around in a police car with an older policeman and then he was considered to be trained. As a result of efforts to improve the lot of policemen and firemen, we took on the city council of the glory of the city of Shreveport to improve those working conditions, and now, today, the city of Shreveport has a fire department and a police department second to none in this state. It was done by an aroused public opinion, which caused the city council to do what was just and proper. I have consistently supported stronger home rule in this Constitutional Convention. I am in support of the city officials from my city who asked me for only help in two cases. One was in the expropriation article and one is in the article, Section 16, for the removal of that exception. Let me bring to your mind what has happened to this convention in the last two days—there have been a considerable number of speeches; there have been press conferences; there have been statements in the media, both print and electronic, about the troubles of C.C. '73. Some of these troubles were contributed by, they say, a large amount of influence by special interests on the delegates to C.C. '73. This amendment and this debate this morning addresses itself to special interest influence on the delegates to this convention. You can recognize a special interest when you see one. You don't have to be kicked in the teeth by an editorial in the paper to know what is special interest legislation, and you know that this exception in Section 16 is exactly that. Look in the stack of amendments on your desk and you can see where there is a pending amendment to add sanitation workers to the list of this exception. Why is that being done? It's done to attract votes to oppose the Lennox amendment—purely, simply, a political stratagem which I trust will not work. Mr. Chairman, in closing I suggest that the speeches on this subject might better be reduced to writing and given by the delegates to this convention in the council chambers of their cities at home and they build a fire under their local governmental officials to do right and to continue to do right by those most esteemed of

Mr. Rayburn. Mr. Chairman and fellow delegates, I rise in support of the Lennox amendment. Since I have been in public office I have endeavored to represent all of the people. I have helped my mayors and city councilmen and my police jurymen far, far more than I have helped the firemen and policemen. Just last week I got a call from a police juror: "We've got a bridge washed out; we have no pile driver." State went there with their crew and replaced the bridge. Recently there were fifty-five miles of street in the city I live in overlaid with a state crew and state equipment. I can go on and on and on and tell you things that this state has done for municipalities and police jurors that you have not heard since this convention has been assembled. All they say is home rule. If the day ever comes when they've got to rule the little home and little kingdom they are trying to rule, they are going to be in the biggest trouble they have ever been in. I'm afraid that they are attempting here today to create a gap with the legislature that they will long, long regret. Is it unfair for a fireman to come to me or a policeman to come to me, which they did in 1948, and I authored the first bill that gave them a regular working hour. They were working then seventy, eighty, ninety hours a week, and if they didn't work, they fired them. You think that's right? I don't. I've helped my mayors with their problems; I've helped every public official I've got with their problems; and I'm going to help the police and firemen with theirs when I think they've got one that's justified. If the day ever comes in this state when the local government has got to have home rule without help from the state, they are going to be in the predicament they've ever been in. It's all right to say, "Give us the money and let us spend it like we please." I never heard a mayor cursed about voting a cigarette tax. I've took a little abuse in every campaign I have ever been in about putting that great tax on those cigarettes. We send part of those funds back to the municipalities. We send thousands of dollars back to the municipalities. We provide those funds. We vote the tax that raises those funds; they get the glory out of spending them. We get all the repercussions for having to raise the funds. I hope the day never comes in this state when we can't help each other. If my mayor that I represent calls me tomorrow and asks for some additional state help, I'm going to try to help him, and likewise have done that for the firemen and the policemen. While we are resting at night, those people are looking after the safety and the welfare of our property, our family and anything we might possess. I hate to think that we would ever go back to the days when some people could work them like they want to, without them giving them any benefits or the benefits that they are justly entitled to. That's the only reason that you...the legislature has helped the firemen and policemen as much as they have. They couldn't get help locally; they had no recourse; they had no other place to go but to the legislature. We responded just like you head on your municipality has no place to go, he has no local funds; he likewise comes to the legislature. We have tried to respond and tried to help them. I've never been

Jury happened to be the youngest one in this state when I first got elected. But if we keep on downing the legislature, I'm liable to go back and run for mayor. I would like to take it easy the few remaining days I have on this old earth. Let me all I can do is raise the money and send it back to old Rayburn and just let him do it out. As I said, I've never heard a mayor cursed about voting a cigarette tax. I've took a little abuse in every campaign I have ever been in about putting that great tax on those cigarettes. We send part of those funds back to the municipalities. We send thousands of dollars back to the municipalities. We provide those funds. We vote the tax that raises those funds; they get the glory out of spending them. We get all the repercussions for having to raise the funds. I hope the day never comes in this state when we can't help each other. If my mayor that I represent calls me tomorrow and asks for some additional state help, I'm going to try to help him, and likewise have done that for the firemen and the policemen. While we are resting at night, those people are looking after the safety and the welfare of our property, our family and anything we might possess. I hate to think that we would ever go back to the days when some people could work them like they want to, without them giving them any benefits or the benefits that they are justly entitled to. That's the only reason that you...the legislature has helped the firemen and policemen as much as they have. They couldn't get help locally; they had no recourse; they had no other place to go but to the legislature. We responded just like you head on your municipality has no place to go, he has no local funds; he likewise comes to the legislature. We have tried to respond and tried to help them. I've never been

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The mayor said "No, it looks like you can't pass it that way; just pass it and give us any little bit of it we can get." That's what happened; it's just not right. When they get in a tight, don't you think they won't bargain a little, but they don't want nobody else to try to bargain. We've got some people here that wants to fix everything for themselves, but don't want nobody else to try to fix nothing--sure have--I'm not going to call their names; they're here, though. If you listen close, you will know I'm telling the truth. But I hope the day don't come in this state when the local officials--create to image with the legislature that I'm afraid they are about to create, because it's going to be bad on the people. When you have an office in the legislature, you represent all the people, whether he is a state employee, whether he is a city employee, whether he works for industry, or regardless of what he does. I've seen the time in this state, when Congress passed a forty hour work week, your policemen and your firemen were working seventy hours a week. Do you think that's right? They couldn't correct it. Do you know who corrected it for them? I helped, and the legislature corrected it for them.

I hope you vote against this amendment.

Further Discussion

Mr. DeBlieux Mr. Chairman, ladies and gentlemen, I'm going to be very brief in this, because Senator Rayburn has already made the remarks which I had intended to make on this. I want to tell you, as a legislator--particularly, Mr. Staggs, I would like for you to pay attention to this--the first firemen's bill I ever voted for, when I was in that legislature, was caused by a mayor of the city of Shreveport telling us in the Legislative Committee that he absolutely refused to discuss wages with his firemen, or working conditions with his firemen. He said he always discussed those with the chief, not with the firemen, and absolutely they had no recourse, anything of the sort; I thought that was quite unfair. At least he should discuss it with them, whether he wanted to do anything about it or not; but he told us in that committee, he refused to discuss it with them. I want to say something to the members at Mr. Derbes made, and that's what makes up my mind in voting for this. I dislike having to tell a local governing authority to pay their firemen or their policemen, anybody else, any wages as much as I do of having to raise the money for these local subdivisions to dole out to their employees. They come to the legislature and want us to do their dirty work for them by raising the money, and then they want the privilege of spending it as they please. That's not right. Whenever you quit asking for revenue-sharing, when you quit asking for supplemental pay for your local employees, when you quit asking for extra cigarette tax, then possibly we won't need to have any control over the expenditures you make. But, as long as we are doling out the money from the legislature, I think we ought to have something to say about how you spend it. Now one other point. I think that when it comes to firemen and policemen, there's a little bit more involved than just local government; that's the rights, human rights, and human property is involved. I don't know of any fireman or any policeman who has ever refused to go outside of his area to answer a call. I just want you to take that into consideration. I think the lives of the whole state, the property of the whole state is involved in this issue, and I think as a result of that, the legislature ought to have something to say about how they operate so that we can be sure that the lives and the property of all of our citizens are protected as much as possible.

Questions

Mr. Alexander Senator DeBlieux, traditionally the problem has been in Louisiana--especially with the city of New Orleans and I'm sure other municipalities in the state--is that the legislature has

passed laws directing the city to raise firemen or policemen or some other municipal employee's wages. Now, as you know, a budget is developed months, sometimes a year, in advance. In addition, when the budget is increased, there are times when the city has to come to the legislature to get permission to raise certain taxes in order to adjust that budget properly. Now, how can you correct that inequity? For example, to raise the firemen and/or the policemen in New Orleans, say fifty dollars per month, it may amount to about two million dollars or more. Now, that would throw a seventy-five or eighty million dollar budget out of skelter. How do you correct that kind of thing?

Mr. DeBlieux Reverend Alexander, I don't know of any time that the legislature has refused to permit the city of New Orleans to raise its taxes. We have passed many a constitutional amendment, but sometimes the people have refused to acquiesce in those amendments. That's where the difference comes, because of the fact that our present constitution limited the operation of the city of New Orleans in its tax structure, and it's necessary to have a constitutional amendment to do that.

Mr. Alexander Wait, you're not answering my question. I'm speaking about where maybe taxes may not... it may not be necessary to raise taxes. All the legislature does is say "Pay the firemen and our policemen more money" and it automatically raises the budget a million dollars. Now, the budget may have already been set, they have all the money that's available; what happens, what do they do?

Mr. DeBlieux I can't answer that question for you, but I don't think...

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I stand in support of the Lennox amendment for these good reasons, I think. This whole business of the firemen and policemen stem from problems of the past. In many cases there were certain injustices; they were caused by lack of finances or funds in the various communities and for certain other reasons. I feel that all of us assembled here today and all of the people who may be listening to my voice today are certainly and sincerely in favor of the best conditions for their firemen and policemen; I know certainly I am. In fact, I am a fireman and have been for many years. I am a hobo fighter, volunteer fireman, in the city of Lafayette. I think that's where some of our problems stem from. At the turn of this century, there were many, many cities in this state had only volunteer firemen. As time grew on, they were neglected; they were the good fellows; they were the leading citizens of the communities who volunteered their services to help their fellowman in his hour of distress. That's where our problems came from. They were neglected by the political figures. As the cities grew and flourished, they were forgotten, because they were good boys of the parish. I have a brother-in-law who is a fireman and has supported my sister and his six children--their six children--for over twenty years on a meager salary of a fireman. I know my sister's problems very well. I am married to a fine lady, who has a brother who is a policeman right across the Mississippi River from where I'm speaking today, and he has been a policeman for many years. I know his problems, and I surely and simply sympathize with the policeman, not only in financial, but some other laws and things that caused him problems in the parish. We are all for these good people. I certainly feel strongly that we should be for all the employees of our cities and municipalities and local subdivisions, not single out one group against the other. This is my problem, this is the reason I stand before you today in support of the Lennox amendment. Let's give each person his same right, each employee. How about the poor person who picks up your garbage? How about the person who sweeps

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time, or three weeks, and since I have a lot of figures here that deal with state appropriation, and before I announce which way I'm going to talk on this, I would like to ask the convention to grant me an additional five minutes time.

[Audience suggested to a lukewarm response.]

Further Discussion

Mr. Womack Mr. Chairman, members of the convention, in the last election we had between a sixty-five and seventy percent turnover in the Louisiana House of Representatives. Did it ever dawn on you why that large a percentage was? Voting for taxes to dole out to local government. If you don't believe it, go back; I know how much trouble it gave me, voting for taxes for local government. I'm going to talk in opposition to this amendment. It's great to be a part of this nonpolitical organization that we have here today. It's great to know that no one should lobby, but the president of the police jury in my parish was called the other night at one quarter to one, or at one quarter to one in the morning, telling him to "get down here in a hurry and try to get on your delegate to the convention."

He said, "For what?"

"Well, to straighten him out."

He said, "Hell, he has been straight. He is representing us and he is doing a good job of it." Now, let me tell you about my local governing authorities. We'll start with the police jury. We'll start off, in excess revenue this current year, giving them a hundred and twenty thousand dollars in Franklin Parish, forty-four thousand under another act, thirty thousand under another one, twenty under another one; and every time I turn around I'm getting a resolution asking for any salvage—bridge, culvert, water, whatever it is—we are going to hard surface a road, go out there and scrape up the gravel off of it and haul it out there and put it on one of our roads. We are doing a very crippling, damaging job to local government. There is not a school in Franklin Parish, or Tensas Parish, or anywhere I know of in northeast Louisiana, where the school board has had a resolution of work done around it, trying to improve the drives, trying to help local government. In short, we dole out more to local government in Louisiana than all of the entire state appropriation of the State of Mississippi. How bad we are treating them, how bad we are treating them. Last year, of all of the contacts I had, or year before last in the session of the legislature, I had more to raise a salary on a state level of the local assistant district attorneys, Mr. Burson, than every other contact I had in the House of Representatives all put together. We want local government; we want local home rule. I don't believe in these people striking; no, they can't strike. We can't tolerate policemen striking; there's no way. I want to talk to you a little about what we are doling out, just a little bit: the district courts, millions of dollars in the local district court; supplemental police pay—this current year's appropriation, eleven million seven hundred thousand dollars; state money going back to the local municipalities to pay their policemen; supplemental pay to the firemen in excess of five and a half million. Let's talk about the city of New Orleans. We cannot vote for this because it's going to hurt my city. I want to tell you about my city. Our road gasoline tax, we had to pass a special act to give New Orleans six million dollars of the road tax; the gasoline tax. The Port of Lake Charles gets their slice of it. The Port of Baton Rouge, we supplement, pretty heavy, trying to keep them in operation—the local schools, local municipalities...cigarette tax, division of gasoline tax, road tax, royalty tax, everything else. I wish you all would go back and check locally and see how many local taxes local government has been able to pass in recent months. The reason we had to put on state tax is because the city of New Orleans was about to close down. The mayor

came up and said "We can't operate, no way for us to operate; please bow and scrape, give us." The other municipalities said, "We are going to lose a little if you don't pass an extra tobacco tax. We are willing to give New Orleans six million, half of the entire state tax." I voted a tax onto the people to give to who? Municipal government, local government. "Leave us alone, let us run our own business." I'm going to agree with Gordon Flory and others who feel that the retirement systems are in problems. We have retirement systems in East Baton Rouge Parish in tip-top shape—local municipal retirement systems, and we are paying for it. I'm paying for it about one or two percent every time I register in and out of the hotel; every time I buy anything, I'm paying that extra percent for it. By the same token, the city of Alexandria has no funded system; the firemen and the policemen have none. They've got a law; they pay into it, and at the end of the year if anyone retires, the money is there provided the city council appropriates it, and the day they quit appropriating, they've got nothing. It's not even as solid as the government of France. We hear, all the way through, about what we are doing to this local government.

I'll be happy to answer any questions if someone has a question about...I've got all the figures here where we doled out to local government to the tune of six hundred and forty-six million dollars. I would like to go into it if we just take about twenty minutes.

Vice Chairman Alexander in the Chair

Question

Mr. Burson Mr. Womack, what else do you propose to do with all this tax money raised from the pockets of the people, other than sending it back home --build some more monuments in Baton Rouge?

Mr. Womack Well, I think in answer to that, the best thing to do is to let local government go back on a local level and vote these taxes themselves. And to go a little further, you know why we are here today? Article XIV. If it wasn't for Article XIV, Mr. Burson, we wouldn't be here. What does Article XIV do? It proposes to give them, that is, Article XIV deals with local government and this convention is here to try to give local government more room to operate. You know when we proposed the amendments and the last time, we had forty-some-odd amendments, the majority of those amendments affected the city of New Orleans. It gave them broader authority for taxes, for running local government, for expanding their authority. You know where it was killed? Not in my district. I campaigned for it and we passed it pretty heartily. You know where it was killed? By the local people in New Orleans, Mr. Burson, by the local people in New Orleans. Now, you talk about they don't trust the legislature, you go cast an election on a local level and see how far they trust them. There's been more local taxes killed in the last three years than there has been in the history of the state, percentage wise in any other decade.

Further Discussion

Mr. Weiss Mr. Acting Chairman, fellow delegates, the flow of rhetoric and reason from this podium this morning has been outstanding. Why? Because the issue is vital. The heart and lungs of this article rest in this section. Why is it a viable part of the article? Because if this floor amendment, Mr. Chairman, could I have a little order, please, sir.

I realize most of your minds are made up. I won't confuse you with facts. I would like to place a label on this floor amendment that might be more understandable to those of us that are confused by the differences of opinion at times. I think that this article can be labeled "that meat of the whole home rule article" which concerns itself, as I said, as the heart and lungs of this article. This is the portion that depends upon

replied, "Yes, their jobs are hazardous; they are different." Maybe the question was misleading by not asking her whether they should have constitutional status or not over other municipal employees, but still the answer was there. Yes, my friends in this convention, I feel these people are different. They are different in many ways but I feel they are here because they have fought long and hard to acquire this constitutional privilege which they enjoy. In this day and age of crime in the streets, it seems to me we should be thinking of giving these dedicated public servants much more, not less. It is beyond me to vote to take away the rights they have fought for and preserved. I think the only way to make exceptions to anything at times is very problematic, but I feel in this case it is much more wrong than right to do away with this constitutional provision. With that, fellow delegates, I ask each and every one of you to show your compassion for these people who have given us much in the past and to support only those proposals which are favorable to the committee proposal and vote down this amendment.

Mr. J. Jackson. Mr. Chairman, ladies and gentlemen of the convention, I will rise and attempt to give you a different perspective on the issue before you. Let me first make it clear that I rise in opposition to the amendment as presented by the Honorable Lennox. I am sitting in my chair and I kind of cringed at all the comments made about being on somebody's blacklist, but I understood what people meant, but let me suggest to you that it doesn't concern me about whose list I be on when I feel that I have a bad list of people that I am exercising my right to vote in favor or against the proposition. I'm quite sure that before this convention is over as in the legislature, if you want to talk about people's particular lists, I have been on the city's bad list; I have been on labor's bad list; I have been degraded on the college's bad list; there hasn't been anything about being on somebody's bad list, even my wife's. Let me suggest, and I want to be very serious, to give you the reasons as to why I rise in opposition to the Lennox motion. I raised in the committee when we were discussing this particular issue, and I raised the question of revenue sharing. I was on the State Revenue-Sharing Committee, and I felt that there was certain considerations that I felt that ought to be implied in the revenue-sharing formula that we were sending back to our cities. I think that I think I have given cities and municipalities significant input, but our committee went as far as to say that if the legislature gave money back to the municipalities, that it was not the municipality's right or responsibility to even account for it. That in itself raised some very serious questions as to how we were going to handle it, and candidly say it, I've been having my problems, and I have told labor with the matter of not necessarily the police protection, but the kinds of police-community relationship, but off the surface I would suggest that you could say this is an opportunity to let the cities have a voice, and I would like to see an attempt to vote in a vindictive manner. I want to suggest to you that I do have an amendment to include all the other workers. I think that we're involved in a fundamental principle. I think that we have given cities and municipalities what we have given the committee up in the legislature, we have provided them with the funds and means, and we have provided them with the ways. This, even in Section 16, they are talking again about having the city council to sign off on the legislative Act. You know we fought that in the section 16. I do have some problems that people have raised concerning the legislature being punitive. I again want to reiterate that the legislature is not void of respective delegations from any municipality, parish government that exist in the State of Louisiana. I know that the parochial Government, I know the kinds of attitude that is given to us, our cities and our municipal

ties, and I think at some point, we're going to have to maintain some checks and balances, so I rise in opposition because I think that, although I would like to see all municipality employees included, I recognize the politics in this convention, and I suggest that I go with the hope that somebody one day, one day will be able to provide the kinds of justice, but seriously got and feel in the door home. I suspect seriously what will happen back home. For those reasons I rise in opposition to the Lennox motion.

Mr. Heine Representative Jackson, I don't know exactly how I'm going to put this into a question, but did I say when I was talking that I was on a blacklist?

Mr. Heine. I meant the unfavorable list, o.k.?

Mr. J. Jackson Thank you.

the Roy. Mr. Chairman, ladies and gentlemen of the convention, you've all heard all the facts and figures, but I want to tell you the history of the abuse of the working man. It started back in the Industrial Revolution, and from there it went forward and went forward until there it threatened the lives of the people that had you the people were able to say that no longer will we tolerate children working eighteen hours a day. No longer will women work in factories twenty hours a day, and it finally culminated in the people rising up and saying that we won't allow this, but there was one bastion, one place where the people could not go, and that was the local governmental subdivisions. It's strange to me that a local governmental subdivision inaugurated and authorized to protect the people, abused the people who should be protected first and foremost, all of its employees, but I'm for at least freedom and the right of people to lead and certainly against this amendment. I'd like to see them all protected, because I can't tolerate the idea that people can be made to work for the privilege of saying, "I work for a municipality," but not get the money to buy the bread to support their families. You've heard a lot of people say that they're carrying a lot of bit now, but that's the history of what has happened, and finally through some miraculous way we were able to say that when you deal with something on a statewide basis like fire protection and police protection, all citizens of this state, all over that state are protected. I think that before we could constitutionally say that we will allow the legislature to address itself to those issues, and we have done it, and that's just another reason we should keep it that way. I would like to see it go further, and I'll tell you all about these lobbyists who are in here, these men and women and what have you are here. The police jurors make fifty dollars at least, minimum per month, per meeting. That, in my judgment, if they meet two or five hours, it amounts to from twenty-five to ten dollars an hour. Let those be the first folks then to say that if we're going to pay a person for only one dollar an hour, quite an hour for eighty hours of work a week, if we're going to pay a person of that caliber and who risks his life and what have you, then we ourselves will cut down on what we're making. We city councilmen who meet once a month and get fifty dollars a month for doing nothing, I think should not get that amount. That still begs the question, because that's not the issue. The issue is whether a working, laboring man, who risks his life at certain times and he never knows when, is going to be paid fairly. Presently, right now, there is a young fellow from the city of Chicago who is in a critical condition, because two nights ago while fighting a fire in an abandoned house, with nothing to

lose but probably a bunch of kindling, the fire bucket came in contact with a hot line, and now this man is in critical condition, and he may not live. Now, you tell me, you tell me that in the past when these people paid two hundred and fifty and three hundred dollars a month and worked all month long at that, is fair, and that we have come all the way from the Industrial Revolution to go back to 1789 or 1800 when people were abused, and then I'll vote for this amendment. But, you can't show me that, and I'm against it.

Further Discussion

Mr. Casey. Mr. Chairman and delegates, unfortunately in discussions on local government, a lot is always said about New Orleans, one way or the other, and I'd like to initially say that the gentlemen who have mentioned New Orleans previously are to a large extent correct, that the legislature has been fair with New Orleans and good to New Orleans. People like "Sixty" Rayburn and Mr. Womack and Munson have been very helpful, and I know it's unpopular sometime to be with the city of New Orleans. In trying to cure some of its problems, and I know "Sixty" Rayburn makes a lot of noise sometime and says a lot of things, but sometime his bark is bigger than his bite, but when he does bite, you'd think you had an alligator or a crocodile taking hold of you, and I particularly think, gentlemen such as those I named, and you can't name everybody who helps us, but I think it's important to straighten up and to clarify some of the facts and circumstances which have been mentioned this morning, particularly when we voted for taxes in 1970. New Orleans wasn't afraid to vote for taxes, for the cigarette tax, Mr. Rayburn. At that time the city of New Orleans was imposing upon itself a one percent sales tax. Why? In order to pay its civil service employees and its policemen and its firemen and to give them the benefits that were rightfully due these employees, but those state taxes were imposed primarily to pay teachers, to pay merit increases to state civil service employees, and we needed our share of the tobacco tax, and we agreed to pull down on the imposition of a sales tax on the city of New Orleans only, we agreed to pull down on that, but the cost of that was the money from the tobacco tax to pay our employees locally, and that's why the deal was made. Mr. Rayburn, and Mr. Womack, and Mr. Munson, you all know that, but I think it's important to clarify that we were trying to help ourselves when we asked for that money, and our present mayor has probably raised more taxes, has voted for more tax increases, than anybody else in the state, locally—approximately ten to thirteen new taxes were imposed in the city of New Orleans. Why? Just to help ourselves. We are willing to assume these responsibilities in the city of New Orleans and we're willing to stick out our necks to raise taxes to help ourselves. Over the past three years, the city of New Orleans in those three years include October of this year, we have given all city employees a five percent increase in pay, and have imposed upon ourselves the responsibility to pay many, many additional benefits to our employees, such as tenure awards for all city employees, improved safety equipment for Sanitation and Streets Department, and the Parkway Commission, and I might mention this, police and fire employment is certainly hazardous, but you want to know the most hazardous job in the city of New Orleans? The sanitation workers get killed or maimed by accidents more than anybody else. In the parish of Jefferson, Mr. Chahardy and Mr. Conino, you know what the most hazardous job is in that parish? The street workers. They get killed and maimed more than anybody else, and I'm for paying all these employees what they rightfully deserve, and it's difficult to rise... and support an amendment like this which might be detrimental to them, but let local government assume the responsibility.

of their own problems instead of imposing upon them like we have in the past through the legislature, very prohibitive retirement measures whereby New Orleans is in debt now to make our retirement systems actuarially sound to the tune of a hundred million dollars. That is detrimental to our cities.

Chairman Henry in the Chair

Further Discussion

Mr. Dennis. Mr. Chairman, fellow delegates, I'll be very brief. I know we've debated this a long time, but I wanted to state for the record that if this were a legislative bill and I were in the legislature, I'd vote for it, because when I was in the legislature I voted against bills that increased the pay of firemen without providing the money to the local cities, because my city fathers told me they didn't have the money to pay it, but we're not saying you can't pass those kind of bills in the future, we're saying here that you can't... that the legislature will never be able to pass any kind of a minimum wage law or minimum working condition law, no matter what the circumstances are in the future of this constitution. Now this is something that does not belong in the constitution, in my opinion. This is a matter that should be dealt with as a statutory political matter and left to the discretion of the legislature, especially when you're telling them that they can't ever pass any kind of minimum wage law. I'm not particularly happy with the language that's in here. I don't think it should just apply to firemen and policemen; I think it should apply to all employees. I don't think we should tell the legislature, "You can't ever pass any law setting a minimum pay scale for anybody in this state." In fact, I hope there is going to be an amendment to this whole section of the constitution. Now I don't see what you need it for at all. We've already given the strongest home rule provision that I could find in looking over twenty or thirty constitutions yesterday. I couldn't find one nearly as strong as we have written already in this article, and you refused yesterday to qualify that to any degree, even when there was a statewide concern that the legislature needed to take care of. I think we have gone way too far. I'm for home rule, I'm not for making localities pay raises when they don't have the money. That's the way I voted when I was in the legislature, but I'm sure not for writing the constitution that says for all time, "Legislature, there's never going to be any situation under which you would be justified in enacting a minimum wage law," because there might be a situation. I wish that the language were different, as I said. I'd like to have it say that the legislature on a statewide basis, something like this, but I believe the decision on this issue is going to be made right here on the amendment, and I'm going to go ahead and retain this language, defeat this amendment, and try to refine it and make it fair and apply to all employees so that we can have the power of the legislature to make decisions about minimum wages. I'm going to vote for you to defeat this amendment.

Question

Mr. Chairman, would it be correct to say that the minimum wage law is a statewide concern and that the legislature has the authority to enact a minimum wage law? Is that not correct?

Mr. Chairman. Yes, it is. But I don't think we should tell the legislature how low you set the minimum wages, that's not the point. The point is that the legislature has the authority to fund it for every municipality and every local government. The point is that the legislature has the authority to fund it for every municipality and every local government.

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a minimum wage law that every city could pay. I think that we should not tell the legislature, "You can't do this," in the next fifty or one hundred years or as long as this constitution is going to last.

Further Discussion

Mr. Wall Mr. Chairman, fellow delegates, you know fate has taken care of me being here today. I had a plane chartered to fly to Monroe to be a pall-bearer in a funeral, and the pilot called me a couple of times and the last time I was to leave here at eleven o'clock, so, wouldn't have been voting on this. The last time he called me, about 11:20 he said, "Mr. Wall, the tornado warnings are such that I'm not willing to fly up there to carry you, but if you want me to, I may be able to find a pilot that would carry you." Of course, I told him to forget it.

The Chairman...I've got to tell this for the benefit of the Chairman. The Chairman is getting to where he is a little warped in his thinking lately. He thought I was going up there just to miss this vote, and that's not the case. So, I'm not going; I'm here, Mr. Chairman.

Fellow delegates, this issue is something really I had some reservations about, until I really studied and thought it out and without pressure. The fact of the business, I was asked yesterday how I was going to vote, and I said, "Well, I haven't completely made up my mind yet." This morning, I have two telephones and both of them were hopping off, and I wouldn't even answer them because I figured it may be somebody calling me, and whoever called wasn't going to influence my vote, but I was going to make up my own mind. But first, I'd like to tell you I believe in minimum wages. I've just been turned in to the Federal Wage and Hour division twice in the last three months and I had to pay up to them. It wasn't that I wasn't paying minimum wages, but I got in a little trouble some overtime for everyone, and where they told them they came then I wanted on overtime. I paid them; I smiled; but I firmly believe in minimum wages. I firmly believe that the legislature has the right, in fact of the business, under our present constitution, I'm informed that it's prohibitive to have a minimum wage in the state, a state law for men, but for women, I think Louisiana needs their own minimum wage law. There are so many things and many businesses that the Federal government doesn't cover that we need to cover. I believe that the state, the legislature, should have the right to protect with minimum wages working conditions for every working person in this state. Now we have such a strong home rule charter this is not...this doesn't have to do with the home rule. They'll tell you that. It really gets down to whether you believe, whether you believe that the legislature should have the right to set a minimum wage for people in this state, whether they be firemen or whatnot. I think that they should set a minimum wage for everyone, and where the legislature has a right to set proper working conditions, too. I think they should have that right. It just boils down to this. It's not home rule. Do you believe that every individual in your community and in this state has a right, the legislature has a right, to say that if this person works, they are going to get a minimum wage? I believe that the legislature should have that right to protect all the working people in this state, no matter who they are. So this amendment of Mr. Lennox' is a bad amendment, and I hope you'll vote it down.

Further Discussion

Mrs. Warren Mr. Chairman and delegates, you are honorable men and women, and I don't come here to tell you what to do or to even try to help you to make up your mind. I think you can do that for yourself. I have been toiling with the situation, and usually I go to the microphone because I'm a little bit ignorant on things and I want to get

some information before I vote on things. Each individual could be placed with a picture in front of you and each one of you would see it in a different light; one would see it one way and one would see it another. One...some of you are going to vote for this amendment, or one reason or another, and some of you are going to vote for...against this amendment for one reason or another. I heard something up here about special interest groups and that was one of the things that I was really looking out for when I came to this convention. Something came into my mind that I heard when I was a little girl. It read like this: "Little drops of water make mighty grains of sand; little drops of water and many grains of sand; makes the mighty ocean in this pleasant land." It is many special interest groups and many little people who help to make up this great state of Louisiana. I have heard from this platform, people speak and say, and one young man was asked, how much money did the legislature appropriation for his salary in a municipality? He said, "Ten thousand dollars." This is just one person. I'm wondering how much of that ten thousand dollars would he be willing to say to the legislature, "Provide this to pay for protection of firemen and policemen." That's just one. When your city officials make up their charter, the first thing they do, they decide how much money that they are going to get all the way down the line. So, they help their plates and whatever's left, you can have it, boys. See how the privilege of doing this, they can set their salary, you just passed it, one time you couldn't set a salary when you were going in as a city councilman, and be paid that salary. Under those provisions, you can do it so you've got home rule. I'm thinking of something now where a person said to me one day, and I wondered what they were talking about. He said to me, he said, "You know, it's a poor rat ain't got but one hole to run in." It really is. I've heard many people at this podium say, I wondered when it came up, the Home Rule Article, "I want to be a legislator, but I don't know me; just take me out." We just took the teachers and things out with their amendment. It's alright for the home rule folks to have the hammer so long as that hammer ain't going to hit my head. Now, the real thing that bothers me was the questions that I asked this morning, that really helps me to make up my mind. I believe every citizen should have the right to participate in the...fully in the political process. This is not provided to them. I don't have much time. If I did, I could go on and on and on. I have, after the charter...and I could talk to you about it, but I knew I didn't have but one minute. So, they don't have the right to participate in the fuller process, political process, as others. You say exceptions; I'm against exceptions, but if you're gonna have exceptions, why exclude me? Thank you.

Further Discussion

Mr. Willis Mr. Chairman and fellow delegates, I hear to the definite disposition of supporting this amendment, and I am fortified more and more in the righteousness of my position by the arguments on both sides of the issue. I hope those opposing the amendment will tolerate my position with the same respect and latitude which they claim for themselves. Perhaps I should hear the saying that "Silence is golden," and just vote. I think it has all been said. Much has been said but the present mis en scene of the argument compels me to urge overshadowing constitutional principles which are so fundamental and so applicable. The exception of firemen and policemen and no other municipal or parochial employees does not have the popular currency, nor does it have sufficient constitutional fortification. The constitution is no place to displace equality or insert inequality by exception. The local government which has duties imposed on it must be allowed the means to perform them with "union, justice and confidence," the words on our State Seal. To those of you who salute it, our firemen and policemen at this podium or in your thoughts, I say that my admiration for their honor, valor,

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violating our basic democratic procedures. We have made good progress, and I think the answer at this time is not in a specific rule change, but rather it is with you and with me. I congratulate you on your decorum, your restraint, your helpful debate. But, may I respectfully suggest that we vote more often and as quickly as we can on the different sections and hopefully we will accomplish our purpose. Thank you.

Amendment

Mr. Poynter The amendment is sent up by Delegates Lowe and Pugh. All right, just Lowe.

Amendment No. 1. On page 9, delete lines 7 through 21, both inclusive, in their entirety.

Explanation

Mr. Lowe Mr. Chairman, fellow delegates, the first thing I want to make perfectly clear right from the beginning, that the outcome of the previous amendment that we discussed has had no relation at all to my amendment to delete this entire section. That's exactly what my amendment does. I informed the proponents of the amendment that we discussed before lunch and the opponents of that amendment before lunch, that regardless of the outcome that I was opposed to Section 16. Now, I want to tell you that I've had some difficulty with this particular article. I don't consider myself a strong home rule advocate and I don't consider myself one that wants to take all of the power away from the local government. So, on all of the amendments that I've seen come before us, I've tried to maintain a middle of the road position to try to give the localities what they need as I thought they needed to operate with. At the same time, maintaining in the legislature that degree of control that's necessary over these municipalities. Now, you know what's going to happen and I know what's going to happen with this particular section. What's going to happen is going to prove to you that this section that we did earlier today is not something that belongs in this constitution. If my amendment fails, you're going to get a flood of amendments that's going to exempt every municipal and parochial employee, that's going to exempt all of the elected officials. We already have one that exempts all the teachers, and I would say that this constitution is no place to discriminate. If we're going to deal with policemen and firemen separately, this constitution is no place for it. Are you going to sit here and say that we're once and for all going to shut the door on all other municipal employees to be dealt with in the same fashion that firemen and policemen can be dealt with? Not just for one day, just for next week, but for all time? I don't believe you want to do that, and I don't believe that you want to go home and tell your parochial employees that that's what you've done. Now, I said from the beginning I knew that this was an issue. I informed everyone months ago that I was not going to make this constitution fight the fight against the firemen and the policemen in the constitution. When I was in the legislature from '64 to '68, I voted continuously not to approve the raises of the firemen and the policemen without furnishing funds to local government. I was sensitive with their cause; I still am sensitive with their cause. But, when we go back, not just for one day, just for many other employees that deserve recognition. We cannot, in this constitution, deny them that recognition. Now, we have a sophisticated, complicated form of government as far as fiscal affairs are concerned. I'm not ready to sit here with Section 16 and say once and for all that I'm going to deny the legislature the right to deal with local municipal and parochial government as far as fiscal affairs are concerned. We're entwined in a web that I don't know what would happen if we did that. We've come a long way, and where we are, I don't know. I have no idea what Section 16 would do. The only thing that I believe, and I've talked to attorneys, I believe that if we take out Section 16,

we're going to be where we are today. I don't believe that where we are today is bad. It gives the legislature the right to look at individual situations. If the firemen and policemen should be dealt with individually, I say, let the legislature do it. I heard New Orleans complain about their dilemma with this particular situation of dealing with firemen and policemen. As I recall, when I was in the legislature, legislators from New Orleans were lobbying me to vote to give firemen and policemen raises. I'm sure the record would show that as many New Orleans legislators voted for raises as those that voted against them. I don't come to this Mike often feeling strongly about dealing with firemen and policemen. As I recall, when I probably would not have offered this amendment myself because I'm not much of an amendment maker. I sit back and listen and vote on amendments, but when I see us get ready to do something, that in my estimation, that is completely ridiculous and unreasonable as far as this constitution is concerned, and I have to repeat, because if I were in the legislature, I would talk night and day and stand up and vote on the particular issue, because I think it is an issue. But, it's not an issue for this constitution. If it is an issue for this constitution, we're not to discriminate against all of the other employees. If we have, they have, they shop at the same stores, they pay the same utility bills, and they do many of the same things. Now, you can, if you want to, shut the door on those people. I can tell you, I, for one, will have said that I stood up and tried to take discrimination out of the Constitution of 1973. So, I appeal to you that you join me in taking out Section 16. I think it's the vast majority of our people would want us to do. I think it's the rational thing to do, and I ask that you join me.

Questions

Mr. O'Neill "Monday", I'm real troubled about what the exact effects would be if it were gone, and what exactly would happen. I'm sincere in asking you if you could explain a little more, what do you think would happen without this section?

Mr. Lowe Well, Gary, Mr. O'Neill, I doubt seriously if we're going to get an answer to that that's going to satisfy everyone. I spoke with a number of attorneys and got some different answers. But, the ones that I spoke to that gave me the answers that I thought were right have said that if we take Section 16 out, we're right back where we were before. That means that the legislature can deal with these matters independently, one by one with firemen; one by one with policemen, with sanitation workers, with maintenance people, with dog catchers. You name it. Now, I'm not an attorney and the only thing I can tell you is that I've listened to our deliberations. I've tried to get out of our deliberations something concrete that I could hang my hat on, and here's what I've hung my hat on, Gary, is that the municipalities are limited by general law. The home rule charters that come into existence after this constitution is adopted will be limited by general law that's in existence at that time. Now, I can say that New Orleans, they tell me, that New Orleans' home rule charter would not prohibit the constitution from dealing with the firemen, policemen problem.

Mr. Roy "Monday", I know you're in good faith in what you believe, but do you know that the charter for the city of Baton Rouge, for Baton Rouge city government makes it that you cannot deal with firemen and policemen because of the LaFleur case?

Mr. Lowe Well, as I've mentioned before, Chris, if you tell me that...LaFleur, case, I'd have to believe it, and I'll also tell you that I'm extremely sincere about what I'm doing...

Mr. Roy I know that.

Mr. Lowe If we've locked the door and one home

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of the City Council of Crowley. That should be decided and the priorities should be set on a local basis. I voted against the exception for fire and police, but we drive it in here. So it was the will of the majority; let's go with it. But, let us not compound the felony by taking this section out altogether, so that these mandates can be pressed upon local government in every classification of employee. Let's let the local government set the local priorities out of local funds through the elected local representatives. Let's let the state government set state priorities from state funds. There's plenty of work to be done in each area. Let's say to our legislators, "decide...If you'd rather be on the city council, run for the city council, but don't try doing two jobs at once." If we take this out, it would be as ridiculous as letting the Louisiana Municipal Association set the salaries of state policemen. Let us not give in to this folly. Thank you.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I beg on the Local and Parochial Committee, I understand what's going on at this point. I want to suggest to you that some of the amendments you are going to hear are some of the amendments, that I told you originally about the firemen and policemen, that I introduced, and some of the very same people who were here proposing some of these amendments to be exclusive of everybody on that committee took staunch opposition. You see, there's no weight in the exception theory as being presented to you here because I know, I've been through this and I guess...we're going to go through it here for another hour, but I've...I've introduced that in the committee and what I hear...well, no, we can't say it for exclusion. So...I would seriously suggest that everybody understand what's going on at this point. That this is merely an attempt, and I don't believe in discrimination and never let it be said, because I don't believe in deceiving people. I know...I know that the attempt is to overload this article and that even if we passed an amendment saying that we can't introduce and run with any amendment for sanitation workers it is going to have the same kind of fate that it had in our committee. You know we're going to move from the exception, then we're going to go back to good government practice. I'm saying that...I just want people here to understand...what's going on and be very conscious of who is coming up here introducing these amendments and what the prime effect of it is. I believe, as Ms. Zervino has said, there is some merit in some of the things that have been presented, but I know the limitation and the extent of what this convention will do, I believe, and what it won't do. I'm not going to fool myself and not...I'm not going to try to deceive people who I represent whether they be firemen, policemen, sanitation workers as such, but I believe this much: if the door is closed on everybody—I'm not sure...if the door is opened for one group, I'm quite sure as I said this morning somebody else is going to get in at some point, and maybe that may be a reservation on your part, but I just wanted you to recognize what's going on and I ask that you vote against the amendment that's being proposed.

Further Discussion

Mr. Flory Mr. Chairman and delegates, I rise in opposition to this amendment. I have searched my conscience and my ability to try to understand the effort being made at this point to delete this entire section, and I have come to the conclusion that if they were sincere in the proposal in itself, then certainly for the protection that they said that they needed for the municipalities and the other political subdivisions, then certainly that nothing has been done to this proposal to change the significant provisions of this section. So, I say to you, that if in their wisdom they sought...they thought that they needed that protection from

the very beginning, that to come back now and suggest to you that they ought to delete the entire section, at least raises a doubt in my mind as to whether or not they were after spite to begin with. I would suggest to you that we reject this amendment and go forward with the discussions on the section.

Further Discussion

Mr. Duval Mr. Chairman, fellow delegates, I think sometimes we engage in harmonies and platitudes too much and don't really hit the issue, and I'd like merely to put forth the issue as what will be the legal situation if this amendment is adopted and let you judge from that point. If this amendment...if the section is deleted, the legislature will have the right to set the wages for firemen and policemen, for all non-home rule parochial entities. It will also have the right to enact similar legislation for those home rule entities which do not have the LaFleur language in their charter. To my understanding, Baton Rouge and Jefferson both have the language which is contained in, the structure and organization language contained in this...in the committee proposal. So, therefore, the ultimate effect would be that, other than Baton Rouge and Jefferson, the legislature could enact legislation affecting the wages of municipal employees, and that is, I think, correct. I'll yield to any questions, but I just wanted to put what I think is a legal situation before the group.

Questions

Mr. Flory Mr. Duval, that's not exactly correct, is it? When you read the definition of structure and organization in the committee's proposal, because what they did was take the language and apply to all home rule charters insofar as structure and organization is concerned?

Mr. Duval Is...Mr. Flory, if I may ask you a question. I think those...those home rule...you might be right...all those entities under home rule charter after this constitution is adopted may well...legislation may well not be able to apply to it. You might be right.

Mr. Flory That's both now and in the future those that are adopted, isn't that correct?

Mr. Duval Yes, sir.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, sometime ago, I suggested to you that we could delete Section 16, at that time it was earlier--it was more sections than that, there were 30,--and not do any violence to home rule charters, the lack of them; that I thought that the committee had prepared and submitted to you a substantial amount of legislative material. I attempted yesterday, to eliminate two of such sections unsuccessfully. Insofar as this section is concerned, I joined with Mr. Lowe in preparing an amendment to delete it. I did so until I found the other amendments laying on the table in reference to the other city employees. I share the enthusiasm of protection of city employees. I feel rather strongly about the policemen, and I want to tell you why I feel that way. First of all, I think the policemen do something that no one else employed, other than perhaps the judges and the district attorneys in connection with local government. They are called upon to exercise on behalf of you, and I, all of the various criminal laws of the state. Their responsibility in my opinion is greater than the average city employee. In Shreveport, we don't have structure and organization in our charters that I tell you, some punitive measures we do have. In Shreveport, if a policeman is hired, he must put six percent of his wages each month into a retirement program. If his services are terminated rather voluntarily or involuntarily, he loses all of that money. That doesn't happen to

think the firmen also, but none of these other city employees have a chance to work twelve hours a day, it's only the regulars that have a chance. I want them to be paid time and half for those additional four hours that he worked. He was not to be paid that - I distinguished the LaFleur case by the Bradford case for the purpose of taking care of that situation. I distinguished it for the purpose of saying that his wages garnished or if he files bankruptcy, he is immediately fired. That does not happen to anyone else that's a city employee. I want you to distinguish those that you will recognize there is a distinction between the regulars and the other employees and those of the policemen. A policeman does his job. He does it eight, or sometimes in Shreveport, to twelve hours a day, and I rise for the purpose of advising you as to those distinctions that are as important as the amendments. I regret that there's a feeling among at least one of you that the amendments that were submitted in connection with this issue are comparable to those that have been submitted to the convention so far. Thank you.

Further Discussion

Mr. Chatalein. Mr. Chairman, and fellow delegates, I feel that this is a good amendment. I feel that originally a good number of the delegates, particularly from the committee which I serve,--Local and Parochial Government felt that it would be better not to have any exceptions in the...in this article...in this section, but now that the tide has turned the other way, I feel that this will eliminate the problem that we have for the immediate future. I feel that this amendment will bring all cities in this state and all employees to the same level. Those cities who now enjoy home rule or will enjoy home rule in the future will certainly, most of them, will have civil service and union involved in their employees which in itself will be a big protection to those employees. I feel that this amendment will do the job that needs to be done. I think it puts everybody in the same position, the cities, the employees, the women, and the city employees who are so vital to the health and welfare of our various communities. I urge that you support this amendment.

Mr. Lowe This will be so quick you will think that I have waived. First of all in the Bill of Rights we said that no person shall be denied the equal protection of law, and it seems that in this case we are doing something other than giving equal protection. I am in favor of a forum for parochial employees and I feel that parochial employees should be able to go before the legislature to present their grievances and for that reason I am in favor of the bill to remove grievances. We're not just dealing with cities of 500,000 we're dealing with cities of a 1,000, 5,000 and we need the legislature involved and I believe that the elimination of Section 16 will keep the legislature involved for everyone and I ask you

its entirety.

Amendment No. 3. On page 4, at the beginning of line 11, delete the following: "heirs of local public officials or".

13. delete the following: "or an increase".

Amendment No. 5. On page 9, at the beginning of line 14, delete the following: "in commission of or for local political subdivision offices".

Explanation

Mr. Mire Mr. Chairman, fellow delegates, all this does is except the sheriffs...the sheriffs, the assessors, the clerk of courts, possibly some of the other constitutional officers who must, in some case get some of their compensation or part of their compensation from the State. We have been excepted all along in all of the local and parochial sections, and because our powers, functions and also our compensations are authorized through the legislature, we would like to, of course, be excepted from the amendment. If we would have been in an ordinance passed by the local governing authority responsible for allowing us to receive our compensation, and we find that this would be quite cumbersome on the statewide basis. We feel that we don't have a lot of opposition to this amendment. I think that we should all be asked from you to favorably vote for the amendment. If there are any questions, I'd be happy to answer.

Questions

Mr. Weiss: Suppose these offices would request a raise of some type, how would they go about getting that increased remuneration?

Mr. Mire We present...we presently request our increase in salary or in compensation...

Mr. Weiss Through the legislature?

Mr. Mire Through the legislature, yes.

Mr. Weiss: But suppose the local government has to put up some of those funds?

Mr. Mire It is actually not the local government per se'. It's all of the tax recipients in the particular parish or districts from which these taxes are collected.

Mr. Weiss: Would...would this be narrowed down to certain exclusive parishes, or would it be a general law?

Mr. Mire. No, this would be a general law.

Mr. Weiss At the present time it's not general law, however, isn't it---applies to...

Mr. Mire Yes, it is.

...specific parishes?

Mr. Mire. No, it's the general law as far the sheriffs, assessors, and clerks, etc., are concerned.

Mr. Dennis Mr. Wire, I'd like to direct your attention specifically to the first amendment. I'd like to think you will see that it is necessary to amend that in order to accomplish what you have just stated?

where they...go to definitions, they define politi-
which, of course, we are officials of a parish and
we're just afraid that it could possibly include
us. It may not, but it may well--and this is why
we want to include that question.

9. Finally, we need to realize that the starting of a nation's economic growth is not the same as the economic growth itself.

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sion and public...local public officials," which you think might include assessors, and clerks, etc.?

Mr. Mire Correct.

Mr. Dennis I see, thank you.

[Previous Question ordered. Amendment adopted: 106-1. Motion to reconsider tabled.]

Amendment

Mr. Poynter The corrected amendment first of all adds two coauthors, in addition to Mr. Rachal, Mr. Chatelain and Mr. Johnny Jackson.

Amendment No. 1. On page 9, line 15, after the word "service" and before the comma "," add the following: "and when not included under--and this is the change "city or parish civil service" instead of "local civil service". Should read "city or parish civil service".

Explanation

Mr. Rachal Mr. Chairman, ladies and gentlemen of the convention, this morning they...you defeated the Lennox amendment. I think it is important for me to explain the impact of my proposed amendment. This morning's amendment covered the entire state. It did not allow for exception for the smaller cities and the municipalities which chose to be covered as the section now provides. The present constitution mandates that municipalities exceeding a minimum number will have a, what I recall, a general civil service, which civil service includes both fire and police. It excludes...the present constitution also excludes from the state municipal fire and police those cities and towns under 13,000 and over 250,000 people. Now, I voted against the Lennox amendment this morning. I did not want to attempt to deny those smaller cities and any other cities which obviously desire to be covered as the section now contains by the Committee on Local Government. Now, I am asking you to support a provision to allow communities which are large enough, able and are desirous to...of providing its own comprehensive governmental services, the right to do so under the principle of self government. The committee's proposal states except a law providing for civil service. I agree with that: "except a law providing for civil service" under the conditions that those communities over 250,000 must have a civil service and there are provisions which govern the supervision thereof. However, to...the committee's section goes on to say "minimum wages, working conditions and so forth" and I say that this should not be made to apply to communities which their own comprehensive civil service program. Now day before yesterday when the convention voted in the Avant amendment, the headlines screamed "Police Power Voted to State." It was alleged that strong home rule had been undermined. The language that I'm trying to insert in Section 16--or without inserting it in 16--does what is tantamount to the same things in regards to regulating pay, working conditions and so forth for firemen and policemen. While I do not wish to force communities which desire the provisions of this section, as it is now written, to be denied their wish. I more strongly do not desire to force these communities which do not want that condition to be forced to live under it. The most disruptive kind of personnel practice is one in which employees have two bosses: one who pays, or has the power to say how they are to be paid, if they work for the other one who supervises. The effect of my amendment then, is to permit those municipalities with what I call comprehensive civil service programs not to be placed under the mandate of the Section 16 as it is now required. I urge you to support this amendment. Mr. Chairman, I'll yield to any questions.

Questions

Mr. Duval Mr. Rachal, to make sure I understand

your amendment, let me ask you, in the event a city's firemen and policemen were under a comprehensive civil service plan, under your amendment does that mean that the legislature would not be able to pass laws affecting the salaries and compensation of these people?

Mr. Rachal That's right, it would exist the same as the legislature does not now pass laws affecting state of city civil service employees.

Mr. Duval Thank you, I understand it completely.

Mr. Avant I just want to make sure that we understand each other, sir. You realize that the present constitution provides for a fire and police civil service system, mandates one for every city from 13,000 to 250,000 population, and that the legislature has mandated it down to 7,500. So you have a fire and police civil service system in every city from 7,500 to 250,000 population. Are you aware of that, sir?

Mr. Rachal Right.

Mr. Avant You are then aware of what adoption of your amendment would do to this section?

Mr. Rachal Well, I don't know how to answer your question except to say that my amendment doesn't have anything to do with the persons now covered solely under state fire and municipal civil service. My amendment is concerned only with municipalities with comprehensive civil service programs which include fire and police, of which there is only one.

Mr. Lanier Mr. Rachal, I don't know too much about civil service, but my municipality of Thibodaux has just started civil service. What effect would your amendment have on the civil service in the city of Thibodaux; we're a little bit over 15,000 people?

Mr. Rachal If your community voted to establish a municipal...I mean a civil service...what I call comprehensive is one that includes all of the employees included under a local civil service; is that the kind that it is establishing?

Mr. Lanier My understanding of it,--Mr. Landry might know a little better, but I think we've got an act of the legislature that authorized us to adopt civil service and the three commissioners all agreed for the employees of all three, the commissioners under the commission form of government that we presently have, to put all of their city employees under civil service.

Mr. Rachal A civil service which includes all city employees, including fire and police, would then fit under the amendment as I have it described here, that they would...they would govern themselves through their local civil service arrangement.

Mr. Lanier That means that if I were to vote for your amendment, that in the city of Thibodaux the civil service board, or whatever it is, would fix the salaries, etc., for the employees of the city of Thibodaux and would not be subject to legislative interference?

Mr. Rachal It would not be subject to legislative interference; there would be it would be subject to the approval of the governor, however, before it would be instituted, but it would be the will of the Thibodaux civil service.

Mr. Stovall Mr. Rachal, might not we better deal with this issue under the civil service provision which will be presented later to this convention. Could not we deal with it in a more comprehensive and objective way at that time?

Mr. Rachal Well, I'm afraid, Mr. Stovall, if we wait until that time we may have gotten ourselves locked into something under this section in this article and my...I'm not certain what will remain

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...the time we finish it. It could well be that the amendment will be passed, and I think it is likely that the...I, and those who support the concept, will wait until that time if we be...if what I am trying to get done is precluded by this section. I think we need to establish the protection at this point. I urge your support of the amendment.

Further Discussion

Mr. Flory. Mr. Chairman, and delegates, I rise to oppose the amendment and let me call to your attention what the...as I understand the object of the amendment is, of course, to exclude the city of New Orleans. But, I think you have to understand that the municipal fire and police civil service does not set salaries. Now, when he says in his amendment "when not included under city or parish civil service," then you've got eleven municipalities that have civil service in this state. You've got a number of municipalities from 12,000 to 250,000 that come under municipal fire and police civil service, under one system of civil service; then you have another come under from 7,500 to 12,000; plus then you have the one in the city of New Orleans. So, what you are doing, actually, by the amendment is reversing everything that we discussed this morning. I suggest to you that this is not a proper amendment, in no way, to do what I believe that the author really intended to do, and I would ask that you reject this amendment and let's go ahead with the discussion on the other portions of the Section 16. I'd be happy to answer any question, Mr. Chairman.

Questions

Mr. Lanier. Mr. Flory, did you hear that question that I asked Mr. Poynter, concerning the city of Thibodaux?

Mr. Flory. I...I heard the question, I believe. Mr. Lanier, and I...first you have to remember you don't have any paid firemen in the city of Thibodaux, so that part don't bother you at all. The other portion is, they're all volunteers and I understand one of the largest in the country---the system that you have there. So that the...I would have to read the civil service provisions, under which the legislature granted civil service, as to the coverage granted in the civil service system established by the legislature for Thibodaux to give you an intelligent answer on that.

Mr. Lanier. Well, would...did you know that we do have policemen in the city of Thibodaux?

Mr. Flory. Oh, yes, and I understand further that the city council of the city of Thibodaux sets their salary.

Mr. Lanier. Well...are you saying that you cannot tell me now whether or not under Mr. Rachal's amendment if the civil service board of Thibodaux would fix the salaries for the city employees, or whether or not the legislature could?

Mr. Flory. Well, I know in that the city council of Thibodaux sets the salaries for fire and for the policemen in Thibodaux. They have in the past, they will in the future---if under the same provisions of civil service that the firemen and policemen come under statewide. Now, as to what you provided with the authority of the civil service commission in the city of Thibodaux, I do not believe that you cannot, through the constitutional provision if you fall within the population brackets that I mentioned earlier on certain other points. I think, therefore, that the city council, under the amendment, would set the salaries.

Mr. Lanier. What I'm getting at...

Mr. Flory. I am with you, and I am with you.

Mr. Lanier. Thank you very much, I am done.

about the...I think it is likely that the municipal employees of the city of Thibodaux, in your opinion.

Mr. Flory. The municipal employees not including firemen or...

Mr. Lanier. Yes.

Mr. Flory. I think that it would have effect...them if you retain the first portion of Section 16. It...what he is adding in his amendment is to the exception so that the first part of the sentence refers to the municipal employees in Thibodaux and we do not disturb that even by the amendment. I might add in closing, Mr. Chairman, to give you a real answer, Mr. Lanier, depends upon what this Constitutional Convention finally does with civil service as a constitutional matter. That's the great fear that I have in the amendment because as to how they may eventually define city, parish or state civil service, municipal and fire versus the two.

Closing

Mr. Flory. ...I think it is likely that the municipal employees of the city of Thibodaux, in your opinion. I think that it would have effect...them if you retain the first portion of Section 16. It...what he is adding in his amendment is to the exception so that the first part of the sentence refers to the municipal employees in Thibodaux and we do not disturb that even by the amendment. I might add in closing, Mr. Chairman, to give you a real answer, Mr. Lanier, depends upon what this Constitutional Convention finally does with civil service as a constitutional matter. That's the great fear that I have in the amendment because as to how they may eventually define city, parish or state civil service, municipal and fire versus the two.

Amendment

Mr. Poynter. Amendments offered by Delegate Lenoir. Amendment No. 1. On page 9 between lines 21 and 22 insert the following: "No local government subdivision shall discriminate in providing civil service, minimum wages, working conditions or retirement benefits against any of its employees individually or as a class." "No local government subdivision or any general law notwithstanding."

Explanation

Mr. Lenoir. Mr. Chairman, and to the members of the committee, I am offering this amendment to the committee has proposed it, and prohibits any local government from discriminating "in providing civil service, minimum wages, working conditions or retirement benefits against any of its employees individually or as a class." Now, I think that I could...I think the amendment would be for itself and I would entertain any questions you might have Mr. Chairman.

Mr. Flory. Mr. Lenoir, would it be that the...if you could explain the amendment to the committee...

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Mr. Lennox That's correct. Proportionately.

Mr. Pugh Under the terms of this amendment, does this mean that everybody has to ride around in police cars since they have to working conditions...

Mr. Lennox I don't believe it does, Mr. Pugh, and I don't believe you think it means that either.

Mr. Pugh I wouldn't ask the question if I didn't think so; I told the same man here that.

Mr. Lennox Well, I don't believe it means that, if that answers your question.

Mr. Goldman I'm getting a little confused about this. Would this...Mr. Lennox, would this amendment make it mandatory to pay the mayor and the city councilmen overtime if they worked more than eight hours a day?

Mr. Lennox I do not believe it would.

Mr. Goldman I've been told it would; now, I don't know who to believe.

Mr. Lennox Well, believe me and you'll be in good shape. I urge the adoption of the amendment and I ask for a record vote.

[Previous Question ordered. Amendment rejected: 16-76. Motion to reconsider tabled.]

Amendments

Mr. Poynter Amendments sent up by Delegate Casey as follows:

Amendment No. 1. On page 9, line 15, after the word "a" and before the word "law" insert the word "general"

Amendment No. 2. On page 9, line 16, after the word "benefits" and before the word "firemen" strike out the word "for" and insert in lieu thereof the following: "which uniformly applies, both in terms and effect, to all."

Explanation

Mr. Casey Mr. Chairman, and delegates, I think a lot of the discussion brought out...has brought out some very good points and information about problems in local government. I certainly know that some of the problems that local government has experienced in some areas has been either the incapability, or the lack of responsibility, to properly accept its responsibilities in dealing with its employees and paying to them the proper compensation to which they might be rightfully due. I can certainly understand why the firemen and police have inserted the exception contained in Section 16. But my point is that if...we should treat everybody equally: What is good for the goose is also good for the gander. I know you have heard that overused phrase many times. So, my recommendation in my amendment is that...if you are going to have an exception for a law, as shown on lines 15, 16, and 17, the exception should be for a general law having uniform effect as applying to everybody. To every municipality, to every form or plan of government in the State of Louisiana. So, I would submit to you, if we are going to establish minimum wages and minimum benefits in the city of New Orleans, East Baton Rouge Parish, Caddo Parish, Mr. Chairman, Jonesboro, let's do it and have uniform application throughout the state. There is no reason to have one pay scale in New Orleans and a much lower pay scale in Jonesboro---and maybe Jonesboro has a higher pay scale or in Covington, Senator Rayburn. Let's treat everybody equally.

Mr. Henry Just talk about the amendment and let's leave the smaller municipalities alone, Mr. Casey, please.

Mr. Casey I beg your pardon.

Mr. Henry Just go ahead and discuss your amendment and leave the smaller northern Louisiana municipalities alone.

Mr. Casey Thank you, Mr. Chairman, I appreciate your encouragement and assistance on this amendment. My only point is: let's treat everybody the same. If we're going to have great retirement benefits in the city of New Orleans, let's give the same benefits to Alexandria, to Caddo, Lafayette, Lake Charles, Jonesboro. I'll yield to any questions.

Questions

Mr. Rayburn Mr. Casey, are the requirements the same statewide to secure employment?

Mr. Casey Senator, I would assume they are not, but I would think the responsibilities are the same, and possibly we might address ourselves to those problems also.

Mr. Rayburn For all municipal employees, the responsibility is the same...

Mr. Casey We're talking about police and firemen only, on lines 15, 16 and 17, and this exception would require a general law for minimum wages, working conditions, retirement benefits, uniformly applied in terms and effect to all firemen and policemen. We're not talking about other employees, we're talking about fire and police.

Mr. Rayburn Mr. Casey, do you think their duties would be equal or are they the same throughout the state. I've been to Orleans when one fellow had to take a little whistle and toot-toot for eight hours--go or stop. Another one might be...drink coffee every thirty minutes or ride around and patrol. Do you really believe that their duties are equal in all municipalities or all villages in this state?

Mr. Casey Senator Rayburn, I can't imagine that the knowledge and experience of an attorney in New Orleans should be any less than the knowledge or experience of an attorney in any other town or city in Louisiana. The responsibilities of a policeman or a fireman or just as great as any attorney. A fireman in Lafayette has to know as much about putting out a fire as in New Orleans, and a policeman must know as much about law enforcement in Union Parish or Webster Parish as in New Orleans.

Mr. Rayburn Mr. Casey, don't you agree that they have got sergeants, they have got chiefs, they have got assistant chiefs, and as far as attorneys, they've got attorneys that practice criminal law, they've got attorneys that practice all kinds of law, and they've got other attorneys who are just known as "fixers"?

Mr. Casey That's certainly correct. What point are you making, though?

Mr. Rayburn Excuse me, I'm making the point that it is not all equal.

Mr. Casey But the requirements to get a law license certainly is; you have to pass the same bar exam, no matter where you are from.

Mr. Tate Mr. Casey, under the present statutory scheme, do they classify the municipalities according to size: for instance, from 0 to 13,000, they don't provide for any salary regulations; from 13,000 to 250,000, they provide a certain scale, and above 250,000, another scale? Is that how it works? Or could you inform us how the present scheme works that this would change?

Mr. Casey I would...first of all I'm not sure what the present scheme is. I would assume the pay scale is...is pretty much up to the local governing authorities. However, if we are going to let police and firemen come in with special

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Mr. Landrum No, I'm asking you a question, Mr. Wall.

Mr. Wall All right. Well, come on with the question; I've...

Mr. Landrum If you'll just be quiet, or if you just don't want to answer my question and talk your time out...

Mr. Wall I want to answer your question, if you'll ask questions...

Mr. Landrum All I'm asking you, Mr. Wall, is that the city of New Orleans, we get a lot of money from revenue...from the French Quarters. The state receives a lot of money from taxes...

[Previous question ordered.]

Closing

Mr. Casey Thank you, Mr. Chairman.

Mr. Chairman and delegates, I wish to inform Shady Wall, who is my very good friend—we've served a long time in the legislature together; I hope he doesn't think I'm starting to grow horns at this time--But, Shady, I'm quite sincere in this amendment. I certainly do appreciate your assistance on New Orleans's problems in the past, and you certainly are one of our supporters, no question about that.

But, here, we are talking about minimum wages, minimum working conditions, pension, retirement benefits; and I can't, for the life of me, understand why we have to have one rule in Lafayette and a different rule in Caddo Parish, Mr. Roemer. It doesn't make good sense to me.

When the federal government passes minimum wage laws, Mr. Roy, they don't say it's different in Louisiana than from Michigan, or from Maine, or California. I can't understand why, for the life of me, when the federal government, and I know we have some strong supporters of the federal government in here, and certainly believe in minimum wages, and I do myself. I think we have to establish minimum working conditions, and wages for our employees. There is no reason under the sun why it should be different in New Orleans than it is in any other part of the state.

I urge you, if we are going to adopt laws which affect police and firemen, which should have the very same qualifications in New Orleans--just because we have a few high-rise buildings in New Orleans doesn't mean we are any different. If you are going to practice law in another parish of the state, I don't care where it is, Beauregard Parish, you ought to know something about admiralty law. If you are going to go to law school, you learn something about admiralty law and administrative law and successions. I don't care where you practice law. By golly, if you're going to practice, or if you're going to become educated to be a fireman or policeman, you ought to possess all of the qualifications.

Thank you.

[Record vote ordered. Amendments rejected: 51-64. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [Mr. Edwards, et al.]. On page 9, line 16, after the word "and", and before the word "police-", insert the word "municipal".

Explanation

Mr. Martin Mr. Chairman and delegates, I think this is more in the nature of a technical amendment. I'm just wondering if they may classify one of my deputy sheriffs as a policeman? That is the reason why I put this in there.

I have no further explanation. If there are

any questions, I will be glad to try to answer them.

Questions

Mr. Champagne Sheriff, I was just wondering, would you say this is a special interest amendment?

Mr. Martin Yes, I do.

[Previous question ordered. Amendment adopted: 89-91. Motion to reconsider tabled. Previous question ordered: at the unauthorized matter. Section passed: 95-97. Motion to reconsider tabled. Motion to reconsider reading of Section 27 adopted without objection.]

Explanation

Mr. Lanier Mr. Chairman and fellow delegates, Section 17 deals with the authority of local governmental subdivisions over the subordinate districts that are created or exist under these districts. What we have done here is to provide the same authority to control subordinate districts as presently exists in Article XIV, Section 46, of our present constitution. This provision was adopted in 1966 in what is called the "Sam Jones Amendment." The problem here is that what was happening in many of our parishes and municipalities, there is authority by general law to create many different types of districts, drainage districts, road districts, lighting districts, hospital service districts. You are familiar, I am sure, with all of the different types of districts that were created. Very often, after these districts were created, they were really creatures of the local governmental authority, but they had no certain degree of independence. The people on the boards of these districts are appointed. They are not elected, and not directly responsible to the people. As such, sometimes situations would exist where these districts did not function as they should, and yet the governing authority of the municipality or parish was restricted in its ability to cure this type of a situation.

In order to make these districts more responsible, and, of course, to give the elected officials on the local level direct responsibility for the action of these districts which they are supposed to have, this constitutional amendment was passed. It is, of course, necessary to allow for the various types of controls described therein over these districts, so that if one of these districts does not function properly, and you as a citizen have a complaint, you can go to your duly elected official and he can't tell you that he doesn't have authority to do something about it, because under this amendment, he does. This is designed to make the duly elected people more responsive because they have the tools available to them to do this. It is also designed to provide for consolidation of districts where necessary. In other words--and I'll give you an example; my parish is a classic example of it--we have many, many drainage districts that are not necessarily coordinated in their efforts. The drainage districts on the upper end of the parish dump their water on the drainage districts in the lower end of the parish, and they don't coordinate their efforts. It may well be, years in the future, we may wish to combine all of these drainage districts into a department of drainage under our police jury. Some parishes are moving in this direction right now. This provision facilitates this type of action and brings about more efficiency in the operation of your government.

Now, if you will review this proposal, you will note that in Item 1 on line 27, it provides that the members of the governing body of the agency will be appointed or removed at the pleasure of the governing...the local governmental subdivision. This is in addition to the present law, although many of the laws authorizing these districts have such a provision. Some do not. The remaining controls are the present Sam Jones Amendment in Article XIV, Section 46; in other words, the authority to

agency with authority to modify or veto its operating budget or line items, the authority to abolish the governing authority presently in its powers and functions. Of course, this can only be done with the local governmental subdivision absorbing the obligations or indebtednesses of the agency. Of course, you couldn't impair a vested right, in any event, under the Federal Constitution.

In the (B) part, we have the supervision of the fiscal affairs which is presently in subdivisions. This is to provide for the local governmental authority to exercise a uniform fiscal control over the entire system so that it can be administered in the best way for all of the people within the district...

The (C) part provides that if the district is created by two or more governmental subdivisions, that the concurrence of all of the subdivisions who joined in the forming of this proposal would have to concur in the action taken. A little later on, we'll be getting into intergovernmental cooperation, and this is a part of an intergovernmental cooperation—say two or three parishes may wish to join together to provide some kind of a juvenile detention facility. This is an upcoming concept that we have in Louisiana regional planning, in handling matters on a regional basis, where it brings about efficiency in the particular function involved. This provision is necessary because many of these districts, most of them are presently provided by general law, and this constitutional authority is needed in order to consolidate and coordinate these activities.

I'd be glad to yield to any questions at this time, Mr. Chairman.

Questions

Mr. Lanier. Mr. Lanier, you kept talking about special districts, but districts, as such, are not created here, only agencies. What is the meaning of the word "agency" in this context? I don't see it defined in the back.

Mr. Lanier. The term "agency," or "district," as used here, are the special districts that are created under, say, like a police jury; you'd have drainage districts and lighting districts and road districts, any numbers of hospital service district, all of these types of single purpose agencies or districts that are used to carry out a specific function that would ordinarily reside in the local governmental subdivision.

Mr. Jenkins. What I'm trying to understand—I can understand that a, say a community redevelopment agency is an agency, or a community action agency is an agency, or a planning and zoning commission is an agency, but by virtue of what, we assume that a special district is an agency under your definition here?

You don't mention special districts anywhere in this section, and then in the next section, you distinguish between special districts and local public agencies.

Mr. Lanier. Right.

The next section deals with districts that are not created by the local governmental authority. This provision is intended to those that are created under, and by virtue of, the authority of the local governmental unit. Most of your general laws dealing with this subject are passed by the legislature authorizing the creation of all of these multi-types of districts under the general umbrella of the local governmental authority.

The other section you are referring to are districts that are not created under the umbrella of the local governmental authority, but are created independently by the state.

Mr. Jenkins. I have two more questions...

Mr. Lanier. I would be glad to answer them, I would be glad to.

Under the present amendment—that's Article XIV, section, agency, district, office, government, or any device whatsoever, having governmental functions, prior authority, such governing, etc."

Now it may be that in order to clarify this point, we might want to put in a definition, in our definition thing, to say that these are the types of things that are included. But the idea here is, these are the districts, or agencies, or commissions, or boards that exist under the umbrella of the local governmental subdivision.

Mr. Jenkins. Now, you mention a number of different powers that the governing authority of the local governmental subdivision has over these agencies. But you don't mention that the governing authority would have the power to reverse the decision made by any such agency. Shouldn't that authority be granted, also?

Mr. Lanier. I would see no objection to that, for the agency, it could certainly reverse its decision.

Mr. Jenkins. Well, certainly a governing authority might not want to make a drastic change so radical as to substitute itself for the agency, but might merely want to reverse a particular decision. Shouldn't they have authority to do that?

Mr. Lanier. I would see no objection to that, Mr. Jenkins.

Mr. Jenkins. One other question: in (B), if we change Section 35 to require a public vote before any tax not authorized by this constitution could be put into effect, would we need to make any change in Section (B)?

Mr. Lanier. I don't think that it would be necessary to make any change in Section (B). I think that the public vote would be a good thing to have, but I don't think it would be necessary to make any change in Section (B). I think that the public vote would be a good thing to have, but I don't think it would be necessary to make any change in Section (B).

Mr. Roy. Mr. Lanier, I have a question. I see the need for this. But, assuming that you think it's necessary, if you say that "they shall have the following discretionary powers," obviously they ought to have, because if they can create, they ought to be able to abolish, don't you think that by limiting it to... to four different powers, discretionary powers, you automatically exclude any other discretionary power they may have because you specifically listed those?

Mr. Lanier. I don't think that it would be necessary to include them. However, these powers are listed as they exist today, and I don't think it would be necessary to include them. I think that the public vote would be a good thing to have, but I don't think it would be necessary to make any change in Section (B).

Thank you, Mr. Chairman, fellow delegates.

—Honorable William Miller in the chair

(continued)

Mr. Jenkins. I have two more questions... Mr. Lanier. I would be glad to answer them, I would be glad to.

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both inclusive in their entirety. Delete the whole section.

Explanation

Mr. Gravel Madam Chairman and ladies and gentlemen of the convention, I believe that at this point it can fairly be said, without too much question, that the principal concepts relating to home rule, relating to local government, have been acted upon by this convention. I ask you to be particularly attentive to the provisions, not only of this section, Section 17, but of all of the remaining sections that are encompassed...

[Quorum Call: 99 delegates present and a quorum.]

Explanation continued

Mr. Gravel I request respectfully that we give very, very careful attention, specifically to Section 17, and generally to the other sections of this article as we proceed with our deliberations. As I stated previously, I don't think there is much question but that we've fought some real hard battles in order to crystallize the concepts that have been approved in this article up to the present time. I think that we can fairly agree that whether we've been on the winning side or on the losing side, that there has been an accommodation of views to the extent that, for all practical purposes, we have put together ninety percent of what should be put together in an article dealing with local and parochial government.

I think it would be well for us to realize that insofar as we are able to do so, we should distill every single section from now on out, where such distillation can be accomplished, and eliminate those provisions that are unnecessary to a new constitution.

We're on page 9 of an article that runs a total of twenty-eight pages, and if we are going to give consideration, which I suggest to you we are going to do, to purely statutory material from now on out, we are going to be on the Local and Parochial Article well through the month of October, because we are going to go through the same painful process of changing sentence, part by part, and eventually getting nowhere.

Section 17, ladies and gentlemen of the convention, begins by saying "in addition to any other powers granted by the legislature" and then proceeds to delineate additional discretionary authority that local government shall possess. That, I suggest to you, is not what belongs in the document that we are preparing. Oh, I know that it could be said that we need this kind of language somewhere and sometime in order to achieve the objects and purposes suggested by the language. But I recommend to you that that be left to the charter, or to the ordinance, or to the statutes that may necessarily be involved, passed, enacted for that particular purpose. The time has come when we must come to a halt and reexamine this work and make sure that we are not engaging in proliferating considerations that really are not of constitutional stature.

I said to a number of delegates today that we have come this far without there being and this is amazing to me—a single situation that anybody can point to where any two delegates in this body are angry with each other, where there have been any, there has been any flaring up of tempers, where dislike or distrust has persisted to any degree. I think that the people of this state are going to realize, when they talk more and more to the delegates who represent a cross section, fairly, of Louisiana, that there is general agreement in this particular body of the definable segments of the State of Louisiana represented in this body, that there is agreement that at this point we have a document that we can all support actively and enthusiastically, even though it may contain provisions that we especially may not particularly like. I think we've got the right atmosphere, and

I think we now have come to the point, now that we have written the article on the legislative department, the executive department, the judiciary department, the Bill of Rights, and the real important part of the constitution insofar as it will deal with local and parochial government, that we...now we have come to the point where we have got to constitutionalize ourselves and make sure we don't wander into the byways of statutory language and material that shouldn't be in the document.

Therefore, ladies and gentlemen of the convention, I urge you now to start the process of elimination, and let's leave out of this proposed document Section 17 and any others that don't belong in it, and you will read it carefully and you will see that there's no necessity for this provision in the constitution of Louisiana.

Further Discussion

Mr. Burns Madam Chairman and fellow delegates, I want to call your attention to the fact that this is the first time that I've been before the microphone in four weeks. You'd be amazed after I promised myself that I was not going to get up here, when somebody else had gotten up and dressed themselves to the same subject matter that I had intended to, is how much I've learned by sitting at my seat and listening. But, I just wanted to follow in Mr. Gravel's footsteps, if I may, and he used one expression there that I think that if we can eliminate that one thing, that it will do more for us to speed up the procedure and the progress of this convention than any other one thing. I don't know...he said it just in passing. I think, but he referred to the winning side and the losing side. I think if we can eliminate these "two sides business," and which side can prevail over the other, and which side can win over the other by repetition or whatever other parliamentary procedure, and if we can eliminate that and get down to the real issues of the convention and the issues of the different sections and the different proposals and get out of this beating the other one...you're going to lose because you can't imagine...I know you can imagine, rather, I should put it that way, that we can't use our talents, and there's plenty of it here. In most of the time they are being devoted and diverted to trying to beat the other side, rather than trying, to bring out the best we can in this constitution. So, I say to you in all sincerity, and I'm certainly trying to do my part of it, is from now on to expedite things, let's cut out this business of what side can prevail and what side can do this and what side can do that, and all of us work together to bring out a good document in the shortest possible length of time. Thank you.

Further Discussion

Mr. Stovall Fellow delegates, I simply want to encourage your support of this amendment. The legislature is acting in a very responsible way, and I feel that this matter will be considered by them and I encourage your adoption of the amendment.

Further Discussion

Mr. Lanier Madam Chairman and fellow delegates, I want to really urge you to consider what you are doing here before you delete from this constitution what I, in my opinion, consider to be a very, very necessary provision, just for the sake of brevity. The people of the State of Louisiana spoke on this point in 1966 when this provision was put into our law. Now, you have two situations. As you...if you will recall, in Sections 7, 8 and 9 we have three categories of local governmental units. We've got the existing home rule charters in 7. They only get the residual grant of authority if they amend their charters in 8. Under 8, the new home rule charters will only have the residual grant of authority, if they choose in their charter.

are not home rule will only have the residual grant of authority if their people vote to have it. What is a statute that authorizes the creation of a city. Most of these districts are set up by statute of equal dignity and magnitude. The legislature, by creating all of these districts, can completely shatter the powers and functions of that unit of local government. The people who are elected to control this district will not have these controls unless they are constitutionally granted. You have this same problem with police juries. Police juries exist by statute right now. In the areas where they exist, they do not opt to have the residual grant of authority, you're going to have a terrible situation just like we have in my parish right now. Under this amendment, as it presently exists, we can make this thing work. But, if this authority is not in our constitutional law, I don't know how many drainage districts we have. We've got all sorts of other districts, and each one is a single purpose power and function of existing government. If the unit of local government that has control over all of this area does not have this authority somewhere to do this, then what kind of a situation have we got? Well, right now we are trying to emerge in this state from the ward concept of local government on the parish basis. If you will notice, the more urban parishes that we have are going to the parish form of government. It started here in Baton Rouge in 1948. Jefferson Parish has gone to it. Lafayette would like to go to it. This is a concept where you don't have a district for every little single purpose like roads, and lighting, and garbage, and sewerage, and drainage in every ward. You combine these districts for greater efficiency. Why should you have ten drainage districts for ten different wards in a parish? This is not in the best interest of the people. The drainage district on the upper end of the parish is going to dump the water on the drainage district at the lower end of the parish, and so on down the line. The coming thought in local government, as I see it in Louisiana, is to try to consolidate these powers and functions so that you will have efficiency and an overall game plan in the parish. Now, this is something that is an absolute necessity, ladies and gentlemen. It's needed for us to progress in our local governments on the local level. Now, if we can distill this language in some other way that would satisfy you, well, fine. But to meet all of these problems and to solve them in one efficient manner, in my opinion, we definitely need a proposal of this type. This is because we're going to have many situations in our parish-home rule, we're going to have home rule units, we're going to have non-home rule units, we're going to have... Please, fellow delegates, defeat this amendment.

Mr. Poynter: Amendments sent by Delegates Duval, Amendment No. 1. On page 9, delete lines 24 through 32 in their entirety and on page 10 delete lines 1 through 16 in their entirety, and in lieu thereof insert the following:

"Article 1. The governing authority of a local governmental jurisdiction shall have control over the property, personnel and finances of the unit. The legislature shall not interfere with the exercise of the powers of the governing authority of a local governmental jurisdiction, as defined in Article 1 of the Louisiana Constitution."

Submitted.

Mr. Poynter: Motion, ladies and gentlemen, fellow delegates, when the subject arises, I believe the desire of this committee with me, was to reach an agreement with

the subject that is suggested in all of the amendments. However, if you will recall that in Section 9, that there are a number of police juries and municipalities which remain under the present general law until such time as they might vote to take the additional powers that are granted by Section 9. Under those circumstances, you could have many municipalities and many of the police juries without the authority that's granted to them in the present constitution to deal with agencies which are created by them, particularly with respect to control in the matter of budget and in connection with the issuance of bonds and the levy of charges and taxes by agencies governed by persons who are not elected. To that extent, I think the same provision, some provision of this kind is needed in order to carry forward the same authority that's in the present constitution, enjoyed by these police juries and municipalities which might not want to take advantage of the additional powers under Section 9. We do agree that this section can be greatly shortened and still provide the basic provisions that are contained in Section 17 of the committee proposal. In my opinion, Section 17 as presented in the amendment covers all of the acts that are covered in Section 17 (A), (B), and (C) of the committee proposal, and would be adequate to protect the governing authority of these particular municipalities and parishes in dealing with agencies created by them. Under the circumstances, I submit to you that the proposed amendment should be adopted and would greatly shorten the language of this section and at the same time do all of the things that the original proposal had indicated.

Questions

Mr. Thompson: Gordon, on next to the last line, says, "prior approval of any charge or tax levied." Do you mean by this, the people vote on this, or are the bonds levied? Is this what your intentions are?

Mr. Kean: Well, in connection with whatever charge or tax would be levied, there would be either constitutional or statutory authorization for that charge or levy. The reason we used the word "charge" is because a service charge, for example, is not considered to be a tax. We simply wanted the governing authority, the elected body, to have the right to give prior approval to that charge or tax, or the issuance of bonds in the event this agency had the authority to carry that out and to levy such a charge or tax.

Mr. Thompson: The governing body or does it mean the people?

Mr. Kean: Well, whatever would be required by the constitution and statutes for the levy of the charge or the tax would have to be done. In the case of a millage, for example, as we'll get to when we get to the finance sections of this particular proposal, you'll find that it has to be voted. So, it would require both the vote of the people and prior approval of the governing authority.

Mr. Hernandez: Mr. Kean, do you think that we need to have the right to remove members of any board or committee that is created?

Mr. Kean: Mr. Hernandez, it was our view that we would have the right to remove members of any board or committee... including without limitation the right to remove members.

Mr. Hernandez: Do you think that would be enough to have the right to remove members of any board or committee that is created?

Mr. Kean: Yes, sir. That's correct.

Mr. Hernandez: My next question is the right to have the right to remove members of any board or committee that is created.

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mention that, and it's my opinion that the governing body should definitely control that. What is your opinion on that, sir?

Mr. Kean I agree, and it was our view that the broad power would include the right to have budgetary control if they desired to exercise it.

Mr. Hernandez No doubt in your mind about that?

Mr. Kean No, sir. It was our view that by the use of the language we've used that we have covered the right to appoint and remove members, to exercise budgetary control, and to substitute a different budget and so forth, as is now presently contained in the proposal by the committee.

Mr. Hernandez Thank you, sir.

Mr. Champagne Mr. Kean, do you know that I think this is a beautiful amendment, and that it is with pleasure that I join back with you folks in your venture with a shorter version 'cause I knew you all could do it all the time?

Mr. Kean Thank you very much, Mr. Champagne.

Mr. Berry Mr. Kean, I certainly am in accord with this amendment, but was it the thinking of the committee that the right to appoint wouldn't necessarily carry with it the right to abolish, and therefore, you want to mandate this power in the constitution? The right to a cui wouldn't necessarily entail...

Mr. Kean Heretofore, the jurisprudence has been in instances where the legislature, for example, authorized the establishment of a hospital district and a board or commission. The question then arising is to whether or not the governing authority which created that district had a right to remove those particular members of the authority; as a result of that, the language which now appears in the committee proposal, was inserted in the 1921 Constitution by amendment in 1966. I think it was. We simply wanted to avoid any possibility that they did not have this power by including it in this constitution.

Mr. Dennerly Mr. Kean, am I correct in assuming that if the ordinance creating an agency provides for overlapping terms, that the right to remove could be restricted in that ordinance?

Mr. Kean Well, I would...it would be a question in my mind that if you have a right to abolish the agency that, of course, that would include the right to remove members of that agency. Whether or not they would...it would have to be within the framework of the ordinance, I really don't know, Moise.

Mr. Dennerly Well, no, I was speaking...assuming the agency continues, you stated previously that it would include the right to remove since they had the right to abolish.

Mr. Kean That's correct.

Mr. Dennerly But, if in creating the agency, over-lapping terms were provided for the purpose of a continuing proper governing of the agency, do you agree that the governing authority would not have the right to arbitrarily remove during the term for which an individual was appointed? The reason I ask that, Mr. Kean, is that we do have such a provision in the executive section, which we have previously adopted, that states that the governor has the right to remove all except those who are appointed for a term under the constitution or under the creating statute. I should think the same rule would apply here.

Mr. Kean I think that if you wanted to have that rule made clear, Moise, we ought to have an amendment to this provision.

[Previous question ordered. Amendment adopted without objection. Motion to reconsider tabled.]

Amendment

Mr. Poynter [Amendment by Mr. Jenkins]. In Convention Floor Amendment No. 1 proposed by Delegate Duval, et al., and adopted by the Convention on today, on line 5 of said amendment, immediately after the words "such agency" and before the words "and to" insert the following:

"to reverse or modify any decision of the agency"

Don't have the period there, so it will fit in sequence, "to reverse or modify any decision of the agency".

Explanation

Mr. Jenkins Madam Chairman, delegates, this is really just a technical amendment to make sure that this concept is included within the general power granted over the agency by the governing authority. It simply says on the fifth line of Mr. Duval's and Mr. Kean's amendment, after the word "agency" the words "to reverse or modify any decision of the agency." It may well be that the power to abolish an agency is the power to appoint members to it and have other supervisory authority. I'm not so sure of that, though. The legislature can abolish state agencies. Yet they can't appoint members to those agencies, and they certainly can't reverse or modify their decisions. I just want to make sure that these local government agencies don't get so autonomous that they're not subject to being reversed or modified in their decisions by the local governing authority. So, I urge the adoption of this amendment.

Questions

Mr. De Blieux Mr. Jenkins, wouldn't the provision that you are trying to add by your amendment be included in the clause, "have such general power over any agency created by it?" "Shall have general power..." if it has power over it, one way or the other, it would include the power to reverse or the power to modify any agency, any decision made by the agency, wouldn't it, if it had power over it? You can't have power over something without controlling it.

Mr. Jenkins The...you see, the ordinance creating the agency may well neglect to say that or may say something contrary to the fact that the power to reverse or modify is granted to the agency. The agency might, in the ordinance, be granted sole authority to make a final decision on...

Mr. De Blieux Well, is there anything to keep the governing authority from revising the ordinance, changing the ordinance that it...

Mr. Jenkins No, but it wouldn't apply to the particular case at hand. You see, the case at hand, the decision at hand that would want to be reversed could not be reversed.

Mr. De Blieux If they have power over it, they can certainly change it.

Mr. Jenkins Well, perhaps it is included and perhaps it's redundant, Senator, but I just want to make sure that this power is included. I think it's really in the nature of a technical amendment, and I'd ask you to go along with it if you would.

Mr. Avant Woody, certain agencies have the power to contract. Now, you couldn't contract safely with such an agency even though they had the authority to contract if this amendment is put on, could you, because you never would know where you stood? You'd make a deal with an agency, lawful and public, and then bam, somebody comes along and says "Oh, no, that's a bad deal. We ain't going to go along

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Mr. Roy Terry, I have about three questions. First of all, in line 17, when you say that this body, "acting through a commission or otherwise," I take it it could act through one person designated to go around determining what has interest or importance of a local nature that they would like to, or this person thinks should be preserved. Is that right?

Mr. Reeves Chris, it wasn't maintain...we didn't intend it that way, but you could, if the local government set that individual up as the individual in charge of historical preservation, you wouldn't need a commission. Yes, in answer to your question.

Mr. Roy Now, the other thing that really bothers me is that in line 18, it then says that apparently this person or this commission would have "the power and authority to establish, operate and maintain" these historic areas and districts "by the adoption of ordinances and laws which is declared to be a public purpose." So, it appears to me that what you are constitutionalizing is that if they decide that I have a big oak tree in my pasture that somebody once threw a bowie knife into, that this one cat could go around and not even expropriate my tree or my pasture, but by ordinance, they could establish, operate and maintain it and let people on it and not even have to buy it from me or expropriate it. Isn't that what it does?

Mr. Reeves I don't agree with that at all, Chris.

Mr. Roy Well, where does it provide for the expropriation of one's property if they are going to...if they can maintain, operate and establish your property, that certainly takes into consideration that they control it. Where have they paid you for that right, or where do they have to pay you?

Mr. Reeves I think back in the Bill of Rights we've taken care of the expropriation and the payment of property by local governmental officials or local government. I think that's taken care of; I don't think that's a problem.

Mr. Jenkins Does this mean, Terry, that if someone had an old antebellum home, that one of these commissions could declare that home part of a historic district and then could operate and maintain that home contrary to that person's will?

Mr. Reeves No.

Mr. Jenkins Well, what does it mean, if it doesn't mean that? I don't understand.

Mr. Reeves Still back in...what you are doing, and I agree with...I mean, what you are saying is the same thing basically as Chris was saying. But, again, you are protected in the Bill of Rights from having your property seized, so you are covered, Woody.

Mr. Jenkins Well, let me ask you another question. You say on line 21, that such...the establishment and operation of such districts and areas is "declared a public purpose." How can you here, in this constitution, declare an area or district to be a public purpose? Isn't that a question of fact to be determined in the particular case as to whether a particular sight, under particular circumstances constitutes a public purpose?

Mr. Reeves I feel not. I think that a state...that your commission, your historical preservation commission should have that authority to determine if it was a...

Mr. Jenkins In other words, anytime any such commission declares anything to be a historic sight, then it's a public purpose. Is that correct?

Mr. Reeves Still, Woody, what you are...You're still going to be able to protect your own personal property, though.

[Quorum call: 40 delegates present and a quorum. Motion to adjourn rejected: 36-71.]

Amendment

Mr. Poynter The first set of amendments are offered by Delegates O'Neill, Lennox, Lowe, Wisham, Alphonse Jackson, and others.

Amendment No. 1, on page 11, delete lines 11 through 25, both inclusive in their entirety.

Explanation

Mr. O'Neill Ladies and gentlemen of the convention, in the early committee proposal, my understanding is that they had what was called something in there for the Vieux Carre Commission. My understanding of what took place in the committee proposal was that this section, Section 19, was drafted in general terms so that the Vieux Carre didn't have to be mentioned. I submit to you that this is the same cat but different stripes, and I submit to you that in drawing the broad proposal that also gone way beyond anything which would have constituted a Vieux Carre Commission. This, I submit to you, is not of constitutional stature. Those people who want this in here voted against historical and aesthetic purposes in expropriating property. Had they been so interested in this, they wouldn't have voted against that. Submit to you also that someone has an amendment which would put the entire...put a new section in which includes both Section 19 and Section 20, and that the amendment to delete this will let that amendment come up, and we can kill two birds with the one proverbial stone. I think that many of you, and I know that here in East Baton Rouge Parish we have historical monuments and things of historical significance—I really don't think a constitutional provision is needed to protect them. Number one, I really believe that the zoning ordinances could take care of these things. The provisions, as drafted right now, would allow them, if you owned an old historic home, to pass an ordinance to set up a commission which could then expropriate your home, take it from you and use it for a public purpose as a historical monument, so that people can pay to come and see your old home. Don't be deceived; this is what it does do, and this provision is paramount to the provision which was enacted in the Bill of Rights to the right to property. I know that this is an emotional issue, and I do know that this was designed expressly to cover one thing in one city in this state. As I said, it's the same cat, and it's in different stripes. If you will look at the amendment, you'll notice that there are many coauthors, and I think that no one group has just decided to gang up. I think it's a group of people who feel the same way, do that this does need constitutional status and that it can be taken care of in Mr. Derbes' section, if they so choose, which will combine Section 19 and Section 20.

Questions

Mr. Casey You indicated that apparently property is taken by a public body of historical value, and is expropriated. I don't know of any instance where that's done. There are historic preservation districts established, such as the Vieux Carre area, but property is not expropriated; it's merely zoned and there are land use classifications, and the commission-Vieux Carre Commission may designate certain buildings as having historic value, and therefore, you cannot demolish the building, but is the property actually expropriated by the state?

Mr. O'Neill Mr. Casey, this provision does not prohibit expropriation, and I think you can see that. I said what I said because I think it's true. If you'll read the language further down in this section, it says "shall have the power and authority to establish, operate, and maintain historic preservation areas and districts by the

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Saturday, September 29, 1973

Vice Chairman Miller in the Chair

ROLL CALL

[89 delegates present and a quorum.]

PRAYER

Mr. Landrum Our Father, in the name of Jesus, we thank Thee this morning for all Thy blessings. We thank Thee that Thou has permitted us, once again, to be able to assemble here in this hall, to try to do the things that are pleasing in Thy sight. Gracious Master, we pray that Thou will give us the will and the courage to do those things which are pleasing in Thy sight. Bless each delegate here, newsmen, bless our leaders, bless the young people, bless the officers...everyone connected with this Convention. Our Father, look upon our families and keep our homes safe. These blessings we pray and ask in the name of Thy Son, Jesus, and for His sake. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Regular Order No. 1. Unfinished business.

Committee Proposal No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government and other delegates, members of that committee.

A proposal making general provisions for local and parochial government, levee districts and ports, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal this date is that the convention has adopted the first eighteen sections of the proposal as amended with the following exceptions being Sections 2, 4, and 10, which were deleted. Presently, it has under consideration "Section 19, Historic Preservation Districts."

Madam Chairman, the other amendments still pend to this section at this time.

[Motion to pass over Sections 19 and 20 adopted without objection.]

Reading of the Section

Mr. Poynter "Section 21. Industrial Areas
Section 21. The legislature may authorize parishes to create industrial areas within their boundaries. In accordance with such procedures and subject to such regulations as the legislature shall determine. Industrial areas shall not be subdivisions of the state."

Explanation

Mr. Kean Madam Acting Chairman and fellow delegates, this particular section is presently in the Louisiana Constitution and was placed in the constitution as I recall it, about 1966 as part of Governor McKeithen's "right to profit laws" designed to attract industry to this state. It simply provides that the legislature may authorize parishes to create industrial areas within their boundaries in accordance with such procedures, and subject to such regulations as the legislature may prescribe. As a matter of fact, the legislature has adopted a general law, which is in Title 33, under which industrial areas are authorized to be created by the police juries of this state, outlines the requirements that the industry must meet in order to establish an industrial area, and provides a procedure by which the police jury may, at...in the event that there is any violation of the agreement between the industry and the police jury, may then

terminate the status.

The statute, in my opinion, has worked well and to the best interest of this state. It is...this section is necessary as I view it, because on of the purposes of the industrial area is to provide that if the industry provides its own, what you might call, municipal services...the street lights, street repair, garbage and sanitation...that then, under those circumstances, that industry cannot be included in a special district which might be created to provide the same service.

The obvious purpose of the legislation and the original constitutional provision was to prevent a situation where a rather small area might be created for purpose of street lights, for example, and include in that district an industry, and in effect the industry pays the whole cost of services that it does not, itself, need, and provides for itself. In my opinion, the section is necessary because of that phase of the operation of industrial areas. Under the circumstances, and in light of the past experience, and in light of the fact that there are many such industrial areas created throughout the state in which industry is now located, with the understanding that they would have these protections, it seems to me that the proposed section's not only needed, but ought to be included in this constitution.

Questions

Mr. Gravel Mr. Kean, at first blush, as you know, I thought that this section was unnecessary. Do you consider Section 21, however, as being something of a limitation on a plan of government, or some rule charter that might contain some provisions that would be contrary to Section 21?...some spill-off or spin-off provisions?

Mr. Kean I don't...let me put it this way, Mr. Gravel. Perhaps we can generate your thought. In East Baton Rouge Parish, in their plan of government, they have had industrial areas ever since the plan was developed. As a matter of fact, this section added in the present Constitution in 1966, and the legislation which followed was taken from the East Baton Rouge Parish concept. Now, I would not consider that this section would permit the legislature, for example, to pass legislation which would take away from East Baton Rouge Parish that provision which is contained in its charter.

Mr. Gravel My second question, and I think, perhaps, my most important question is, "Does not this cause some real serious problems when we really don't have any constitutional definition, which I don't think we should have, incidentally about what we're talking about when we say "industrial areas."

Mr. Kean Well, I think that's been defined in the Title 33 statutory provisions, Mr. Gravel.

Mr. Gravel I agree with you, and that's why I would continue to believe that in all likelihood, it might be better to delete this and leave the entire matter up to the legislature, because the legislature could change the definition of industrial areas which would be, in effect, change the constitution. Would it not?

Mr. Kean Well, I don't think it would have that effect because of the language that's used here that the boundaries be in accordance with such procedures and subject to such regulations as the legislature shall determine. As I view it, the only reason for the inclusion of this section in the constitution is that when you say that if you create an industrial area, it cannot be included in any special districts established for the purpose of providing services that the industry provides. Under those circumstances, that could be construed as an exemption. Therefore, if we are going to continue with the inclusion of this concept in the constitution, then this section is necessary.

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constitution.

Now I heard Mr. Kean's reference to why they put this in here. But if you want to extend the exemptions insofar as that's concerned, you ought to put that where you place the exemptions, not here in this particular place. It is strictly out of place here regardless of what the intent was meant for. So I ask you to let's go ahead and delete this and shorten this particular proposal like it should be, and put into it only those words which are absolutely necessary.

Questions

Mr. Riecke Senator, I understood Mr. Kean to say that this was put in the constitution in 1966. If it was, then it obviously must have been voted on by the people of the state. Now, if all of the people voted for this, don't you think we ought to keep it in?

Mr. De Blieux Mr. Riecke, it wasn't put in in this particular proposal in 1966....it was put in

Mr. Riecke It was put in the former constitution.

Mr. De Blieuxin connection with something else to give them that authority. Now, it's not necessary in this particular proposal. It may be necessary someplace else. But I'm saying right here, it isn't. I believe all the constitutional lawyers in this legislature will agree with me on that.

Mr. Riecke O.K.

Mr. Slay Senator De Blieux, I had really intended to direct my question to Mr. Kean, but I didn't have time.

He stated that one of the purposes was to keep a small district from taking in a large industrial plant. Wasn't it also intended to keep a large industrial plant, such as these oil plants up here, and the aluminum plant, from coming into a large district, such as the city of Baton Rouge when this thing was passed?

Mr. De Blieux With the way that this is worded, Mr. Slay, I don't see how it could do either. It'd be absolutely up to the legislature as to what discretion they wanted to make in it.

Mr. Slay That's right. So my question then is, it would be better if it was left to the legislature in order that this thing may be changed later, not that it needs to be changed at this time, but the people would have a chance, if the time comes that it has to be changed. Right?

Mr. De Blieux With this particular provision out of the constitution, the legislature could still do anything in the world they wanted with it.

Mr. Hernandez Senator De Blieux, don't you agree that this Section 21 was placed in this proposal by the committee in order to aid these areas such as Vernon Parish, in an attempt to bring industry into those parishes that is direly needed for the economy? Won't you agree that that's the reason they put this in here?

Mr. De Blieux Mr. Hernandez, I don't know why they reason except that's the explanation as given by Mr. Kean. But I say that they could still do anything in the world with this, in or out. This doesn't make any restrictions on the legislature; it doesn't mandate them to do anything. It doesn't tell them they can't do anything. So, therefore, it's just needless verbiage in the constitution and we don't need it.

Mr. Hernandez Senator De Blieux, do you see any injury that this might do to any section of the State of Louisiana? Do you see of any possibility of any injury that this might do to any section?

Mr. De Blieux Mr. Hernandez, no injury--no good, either.

Mr. Hernandez Well, if....if the areas that need these industrial areas, feel that this is....you might say a foundation from which to make a plea to the legislature to create an industrial district....create an industrial district....do you see why that would hurt anybody?

Mr. De Blieux I don't see where it would do any good, either.

No hurt, no good. It's just cluttering up the constitution with extra verbiage. That's all it does.

Mr. Hernandez You can't blame us for feeling like it would help, though, could you?

Mr. De Blieux No, I don't blame you for that.

Further Discussion

Mr. Lennox Madam Acting Chairman, fellow delegates, I rise in opposition to the De Blieux amendment. We've just passed over two sections of this particular proposal dealing with the preservation of historic buildings, monuments, structures and so forth.

I submit to you, we should be thinking about preserving meaningful employment and creating prosperity in the State of Louisiana. This particular proposal does no violence to that. I would ask that you defeat this amendment.

Questions

Mr. Abraham But Ed, couldn't this one paragraph we are trying to reword deal with the historical areas and everything, could also include industrial areas? Handle it all in one section?

Mr. Lennox I would assume that would be...that could be the case. But let me submit to you that in 1966, or whenever this was made a constitutional matter, that there had been industries brought into the state based on some understanding that there was going to be a reasonably good climate for the development of that industry in the state. If you go to making severe changes, however innocuous they might seem, and as Senator De Blieux may have indicated to you, you may be doing some violence to the industrial development of the state in the years to come.

Mr. Champagne Mr. Lennox, assume we do leave it in here. Do you see any need for the sentence, "industrial areas shall not be subdivisions of the state"? Do you....do you see by any stretch of the imagination that anyone would assume they would be when they are in a parish?

Mr. Lennox I'm....to be entirely candid, I don't see any reason why that sentence should be in there. But I am sure that the committee must have had some reason for it.

Mr. Lanier Mr. Lennox, if that sentence were not in here, would it not be possible for the legislature to make these areas subdivisions of the state?

Mr. Lennox It would, indeed, and I yield to your good judgment on the subject matter.

Mr. Lanier Have you noticed that in the course of our debates that, generally, when our delegates are for something, they feel it's constitutional, and when they are against something, they feel it's statutory?

Mr. Lennox That is correct.

If there're no further questions, I ask you to defeat this amendment.

Further Discussion

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there is no....are no exemptions, unless they are from the constitution.

Mr. Roy Well, why don't you spell it out, then, instead of...I don't...I don't agree with you. I can't possibly see how this indirect language is what you are referring to....

But how can you, why can't you spell it out, if that's what you all want to do, and say that industrial areas shall be exempt from taxation.

Mr. Keane It's because they are not exempt from all taxes. They are only exempt from those which the legislature has prescribed in the legislation enacted in pursuant to this section.

Mr. Willis Mr. Keane, the....reason....is not the reason for this to be in the constitution so that it will be irrefutable law with the view of assuring and underwriting the bonds that are necessary for this subdivision to be created?

Mr. Keane No, sir, Mr. Willis, this doesn't have anything to do with bonds. This industrial area does not have any taxing authority; it can't issue any bonds. It's simply to insure an industry....

Mr. Willis I'm talking about the bonds, these of either police jury borrowing the money to....that's what I'm talking about.

Mr. Keane Oh, yes.

Mr. Willis So that it will give substance and irrefutable law with respect to bonds, so that the violations of those contracts may not be impaired, and the bonds are readily sold.

Mr. Keane I would think that's good.

Further Discussion

Mr. Roy Madam Chairman, ladies and gentlemen of the convention, I rise in support of the amendment. I think we are getting a little paranoid or some people are making comments all the time that any time you see to dress up something a little better, or to eliminate language that is just verbiage, that some committee proposal has been attacked. At the same time, Mr. Keane says this in needed--which I don't see; I don't see how in the world, authorizing the legislature to do something it may do, that we are creating any constitutionally tax exempted areas--he turns right around and says that if we handle it down the road like it should be, then we can come back and eliminate it, which means to me that it's not needed at this particular time. But, I want to call your attention to one other feature in here that I don't think anybody has addressed himself to and that's the last sentence: "Industrial areas shall be no subdivisions of the state." Now, we have gone along and we are saying that we are not clairvoyant, we are not sure about everything that happens in the future, what will be....what this state will be like twenty years from now with respect to different types of subdivisions, different types of agencies, different types of units and suddenly we constitutionalize--right here in this constitution--that you shall never make an industrial area a subdivision of the state. It may be fifteen years from now that some industrial area, some self-contained city within itself, will want to be a subdivision of this particular state, and will be able to petition the legislature for it, to incorporate and do what it wants. Yet, we are constitutionalizing that this is impossible unless you get a constitutional amendment. Now to say that we are not supposed to take language out of this constitution that is innocuous because it was in the past constitution, I think is redundant. To think that we have already cut down the present constitution by some eighty percent and to have someone argue, "Let's leave this in here because, well, it doesn't do any good and it doesn't do any bad, and it's in the present constitution, so we may not get hurt by it," I just don't follow that logic. I'm for the

amendment.

Questions

Mr. Lanier Mr. Roy, am I correct that when we were on the Bill of Rights, you also said we were paranoid about law and order?

Mr. Roy Yes, I certainly did, Mr. Lanier. It hasn't changed except for those people who were against a Code of Ethics for local officials, but that's not the issue. A Bill of Rights is to protect the individual from the state, and we didn't put anything in there that said that the legislature may do certain things; it was..."you cannot"; there is a different.

Mr. Abraham Chris, isn't it true that if this section were deleted, and we would get to the Revenue and Taxation Article, and if we need some language in there, it could be added, then?

Mr. Roy Well, if it's needed that's the place to add it, not to put a bunch of words here that we later may want to come back and take out because we don't really need it.

Mr. Goldman Mr. Roy, in this language that is in there now, exempting an industrial area from being a subdivision of the state or the parish, wouldn't it be possible for an industry to come in, establish the...the parish establish an industrial area, the industry build homes for its employees, and all the homes in that area then would be exempted and everything else?

Mr. Roy That's exactly right. If you look at the future of this country you are going to see that in many cases industry will build separate cities. If you say they may never be a political subdivision, that's absurd to put that in this constitution.

Mr. Stovall Mr. Roy, have you seen Mr. Flory's amendment?

Mr. Roy Yes, I saw it and I think that if we can get rid of this, we certainly don't need that.

Mr. Stovall Yes. In other words, if we do not delete this section, then we have to come in with a great deal of additional material to make it acceptable, and certainly Mr. Flory's amendment is legislative material.

Mr. Roy There is no question about that, Reverend.

Further Discussion

Mr. Womack Madam Chairman and members of the convention, in 1966 I was on the Judiciary Committee in the House that handled this legislation. I remember very distinctly, at that time, industry, the attorneys, the legal counsel for industry, the Department of Commerce and Industry officials came before that committee....

Mrs. Miller Mr. Womack, just a minute. Let's get a little order; it's awfully noisy in the back.

Mr. Womack Madam Chairman, I guess I'm as guilty as anybody else of carrying on a lot of conversation--and a lot of times, a lot of useless conversation--but we are dealing now with the possible industrial growth of the State of Louisiana and nothing could be much more serious. I'll go back and start over. In 1966, when we started out with this legislation, I was on the Judiciary Committee that handled this in the House. The testimony before that committee I remember very, very well. It was by the industrial attorneys that was there and by the Department of Commerce and Industry officials. Their testimony was that this was needed and was beneficial in the eyes of industry. Now, I take the position today that I'm against the De Blieux amendment. I'm against it because if

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the executive what they can do or they can't do and have an orderly organized judiciary. As this particular section is worded, the only thing it says is that "The legislature may authorize industrial districts"; other than that, it has nothing to do with industrial districts. There is no tax exemption provided in this section, regardless of what has been argued here. This doesn't have a thing in the world to do with tax exemption; it just says that "The local government may be authorized by the legislature to create industrial districts." Now they can do that. You don't have to tell the legislature they may do it; they can do it. I tell you they can do it. So, why do you have to put it in the constitution? It's just plain and simple as that. I'm just asking you so...if we are going to leave everything, as stated, to Style and Drafting, Style and Drafting will have to completely draft us a constitution because that is what we are saying, every time we come to one of these provisions that we want to make some change that we think is unnecessary or shouldn't be in the constitution or should be someplace else, they say "Let Style and Drafting take care of it." If it belongs in the Exemption Article, when we get to exemptions let's take care of it there. It has no place in the constitution in this particular spot, this particular proposal. So, I ask you to let's exempt it and get it out and proceed orderly like we should.

Question

Mr. Womack Senator De Blieux, isn't the responsibility of Style and Drafting's job to place these things where they belong, and if this is the wrong place--which you said earlier it was in the wrong place, if we were going to pass it---isn't Style and Drafting's responsibility to put it over in the place it belongs and to tie it in with the rest of it?

Mr. De Blieux Well, why not..when we get to the particular exemptions, Mr. Womack, we should take it up there; it shouldn't be taken up here. This is not the place for it, whether Style and Drafting can shift it or not; it makes no difference. We are putting too much burden upon Style and Drafting to correct all of our errors and mistakes.

[Record vote ordered. Amendment rejected: 25-86. Motion to reconsider tabled.]

Amendment

Mr. Poynter Next set of amendments sent up by Delegate Gravel:

Amendment No. 1. On page 12, line 6, after the word "create" and before the word "industrial" insert the words "and define"

Explanation

Mr. Gravel Madam Chairman, ladies and gentlemen of the convention, I simply had one concern in the event that this particular section would remain in the constitution and that is that there was no definition of what constituted an industrial area. Mr. Kean tells me he has no objection to our adding into the committee language, the committee proposal, not only the concept that the legislature can create the industrial area, but that the legislature may define it. It's really in the nature of a technical amendment and to make sure that there's no question but that we will have a legislative definition of what constitutes an industrial area. Mr. Kean tells me he has no objection to it, and I would urge the adoption of the amendment unless there is objection by someone else.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendments sent up at this time by Delegate Flory:

Amendment No. 1. On page 12, line 8, after the word and punctuation "determine." and before the word "Industrial" insert the following: "All industrial areas so created hereafter shall include provisions for access by public road to any and all entrances to the premises of each and every plant in such area which entrances are provided for use by employees of such company, or for use by employees of independent contractors working on such premises, or for delivery of materials or supplies, other than by rail or water transportation, to such premises. Where individual plants provide police protection this protection shall be confined to the premises of each individual plant located in the area."

Explanation

Mr. Flory Madam Chairman, and delegates to the Convention, this is precisely the language in the existing constitution providing for the creation of industrial districts. This was a part of the constitutional amendment adopted in 1964 in the creation of these districts, sponsored at that time by both labor and management, with the wisdom of the legislature working out the details as now before you in the existing constitution. I suggest to you that this is a matter of constitutional authority really mandating industrial peace where there are, and will be in the future, disputes between management and their employees. I have...my understanding is there is no objection to it. Mr. Lennox, I believe, and both agree on this, that it ought to be and remain in the constitution. I would ask for the adoption of the amendment.

[Previous Question ordered. Record vote ordered. Amendment adopted: 84-23. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 97-13. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 22. Creation of Special Districts by the Legislature; Authority

Section 22. Subject to the limitations imposed in this constitution, the legislature, by general law or by local or special law may create or authorize the creation of special districts, boards, agencies, commissions, and authorities of every type, define their powers, and grant to the special districts, boards, agencies, commissions, and authorities so created such rights, powers, and authorities as it deems proper, including, but not limited to, the power of taxation, the power to incur debt and issue bonds, and the power to reclaim property from the beds of lakes and streams."

Explanation

Mr. Kean Madam Acting Chairman and fellow delegates, one of the major problems with the 1921 Constitution, as it developed over the years, was the inclusion in the constitution of special districts, special agencies, boards and commissions which then, as time went on, required additional amendment until we reached the breaking point in the 1960's, when the number of amendments that had to be offered were just too many for people to take. One of the principal efforts that the Local and Parochial Governmental Committee attempted to carry out was to provide a vehicle which would take out of this constitution all of these special boards and commissions and agencies and districts, and provide a simple vehicle by which they could be established by the legislature in the future, and that is what this section does. We have deleted from this particular proposal all of the special districts, agencies, boards and commissions that were included in Article XIV of the 1921 Constitution. It was our view, supported by bond attorneys of some note who appeared before the committee, that while it could be argued that the legislature would have all of the authority not prohibited to it by the con-

...necessary to have a general provision which would spell out, without any doubt or ambiguity, the right of the legislature to enact laws--general, local or special--under which boards, commissions, agencies and districts could be created and established and to give to those boards, commissions and so forth, the right to tax, the right to issue bonds, the right to incur debt and, thus, through this method avoid, hopefully, any further amendments to the constitution by way of the creation of such special boards, districts and so forth. We believe that this is necessary in order to make certain that there is absolutely no doubt in the mind of any person that the legislature has this authority and that it can be accomplished by a simple legislative act, and under the circumstances, I urge the adoption of Section 22 designed, as I say, to make certain that we eliminate the necessity for anyone putting any special districts, boards, or commissions in the Constitution in the future.

I'll yield for any questions.

Questions

Mr. Duval Mr. Kean, if there were one statement in the Constitution saying that "The legislature shall have all powers not specifically limited in this constitution," would that take care of this?

Mr. Kean Mr. Duval, in my opinion, it probably would. But, we are taking out of the constitution the action of the committee twenty-eight special districts, boards and agencies. We were concerned that without having some specific language that related to boards and commissions, someone was going to make the position that we needed a constitutional provision to authorize some district in the future. We were simply trying to provide the frosting on the cake to avoid that possibility.

Mr. Poynter Mr. Kean, on line 19 where you say "to incur debt and issue bonds," then you say "and the power to reclaim property from the beds of lakes and streams." Would you explain the reason for that being in there for me, please, sir?

Mr. Kean Yes, I will be glad to, Senator. There were several instances in the past---and I'm certain you are aware of them---whereas in the case of Calcasieu and Lake Charles they wanted to reclaim some part of the Lake Charles over there for that civic center development. In order to accomplish that, they had to have a constitutional amendment. I think in the case of some of the districts in Jefferson Parish, that particular situation was also dealt with by constitutional amendment. We were simply trying to cover areas to avoid further possible constitutional amendments. Frankly, I have no objection to the deletion of that language from this section, if it causes any problem, and leave it to be dealt with by Senator Lambert's Committee on Natural Resources.

Mr. Lambert Mr. Kean, this would not allow the power to incur debt and issue bonds, would it?

Mr. Kean No, sir. I told Mr. Avant I would not.

Mr. Lambert The reason for that is because we have had extensive hearings on this area, and we are going to cover that.

Mr. Poynter The only reason I was curious was because of the language "and the power to reclaim property from the beds of lakes and streams." Is your committee is dealing with the problem, why it's perfectly agreeable with me to take it out.

Mr. Burns Mr. Kean, I understand that bond attorneys are interested in this particular section, because it is their opinion and think that the base-

of the districts.

Mr. Kean That ain't necessary. In their appearances before the committee, they urged the committee to have such a broad general section out of an abundance of precaution. We were striving to avoid a situation where we get ourselves involved in a morass of additional amendments, and if this would accomplish it, we felt it was desirable to do it.

Mr. Lennox Mr. Kean, what effect, if any, does this have on levee districts that now exist?

Mr. Kean None.

Mr. Lambert Mr. Kean, on line 20, "the power to incur debt and issue bonds," and this power, according to the language prior to that could be conferred by legislative act; it would be left up to the legislature then to decide whether or not a special district could issue bonds, as to whether or not the people would have to vote on it? In other words, they could do it without a vote of the people if the legislature so desired; this would strictly be left up to the legislature?

Mr. Kean I strictly leaves it to the legislature, and I would imagine that the legislature would, in any case, authorize it without a vote. I might say, Senator Lambert, that most of the districts, garbage districts, street lighting districts, road maintenance districts, are already in statutory material. They all require an election in order to issue bonds or to levy taxes by those particular districts. We haven't changed that in any way.

Mr. Leigh Mr. Kean, is there any provision in your article or is it necessary to recognize the continued existence of districts that are now in existence at the present time?

Mr. Kean We anticipated that would be taken care of in the transitional material, Tommy.

Mr. Leigh That there would be some provision recognizing and maintaining existing...

Mr. Poynter We would want to make sure that the language in the transitional material is taken care of in the transitional material.

Mr. Leigh Yes.

Mr. Poynter Amendment No. 11 to the Constitution, page 12, line 20, after the words "...word, 'bonds', change the comma to a period and delete the remainder of the line, and delete line 21 in its entirety.

Mr. Avant Madam Chairman and fellow delegates, as the individual who was appointed delegate to this convention to represent the interests of wildlife and waterways, I am pleased to see this amendment.

This section would permit, by simple legislative act, the creation of a local board, or commission, or agency, and would give that agency or board the power and authority to fill in and reclaim the bottoms of our public waterways and navigable waterways in this state. This is a very significant matter. It is also a matter which should not be considered at this particular time, and in this particular session, because of the fact that the committee on Natural Resources, and they have already certain programs which will include the bottom and waterways. It is also a matter which should not be considered at this particular time, and in this particular session, because of the fact that the committee on Natural Resources, and they have already certain programs which will include the bottom and waterways. It is also a matter which should not be considered at this particular time, and in this particular session, because of the fact that the committee on Natural Resources, and they have already certain programs which will include the bottom and waterways.

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a lake, or a portion of it, should not be reclaimed. I am not saying that. I'm just saying that it is a matter of great importance and significance to the people of all of the state, and that this is not the proper method or time or place to consider it. But that it should be considered in connection with the article on natural resources. It should be considered in considerable detail. Perhaps, I suggest to you at this time, at that time we can come up with some reasonable and proper safeguards and protection for all of the people of the state, when we consider the exercise of this power which, I say, is a very significant power and definitely should not be dispensed on just a "blank check" basis by a simple act of the legislature to some local agency.

Questions

Mr. Lambert Mr. Avant, is it not true that Mr. Perez and Mr. Kean have no objection to your amendment?

Mr. Avant This is correct. I am informed by Mr. Kean and Mr. Perez that they do not object to this amendment.

Mr. Lennox Mr. Avant, if your amendment passes and you delete line 21 and that portion of line 20 that you suggest, and you do not deal with specific prohibitions elsewhere in the reclamation of property from beds or streams, would not the legislature then have that authority?

Mr. Avant I think they would, Mr. Lennox, but let me tell you something, we are going to deal with some specific prohibitions. Have no fear of that.

Mr. Lennox I just wanted to suggest that maybe that's what you did want to do.

Mr. Avant That is exactly what we're going to do. Thank you for your attention.

Mr. Perez We have no objection to the adoption of the amendment.

[Amendment adopted without objection.
Motion to reconsider tabled.]

Amendment

Mr. Poynter The next set of amendments sent up by Delegate Gravel.

On page 12, line 12, after the word "to" and before the word "this", delete the words "the limitations imposed in" and insert in lieu thereof, "and not inconsistent with the provisions of".

This one deletes the words on line 12, "the limitations imposed in", and inserts in lieu thereof, "and not inconsistent with the provisions of".

Explanation

Mr. Gravel Madam Chairman, ladies and gentlemen of the convention, this amendment is consistent with similar amendments that have been adopted by this convention to make sure that we are talking here, in Section 22, about provisions that are not inconsistent with other provisions of this constitution, rather than with provisions that are specifically referred to, and that constitute limitations in the constitution.

Mr. Perez and Mr. Kean both agree that there is no...should be no objection to this amendment and are willing to accept it.

Therefore, Madam Chairman, I move the adoption of the amendment.

Mr. Perez No objection to the adoption of the amendment.

[Previous question ordered. Amendment adopted: 10-4. Motion to reconsider tabled.]

Amendment

Mr. Poynter Sends up amendments as follows:

Amendment No. 1 [by Mr. De Blieux], on page 12, delete lines 10 through 21, both inclusive in their entirety.

I suppose for clarity, Senator De Blieux, it would be well to add, "including all floor amendments thereto."

Explanation

Mr. De Blieux Madam Chairman and ladies and gentlemen of the convention, I'm not going to labor the point, because the argument on this is the same as on the other amendment that I previously proposed to the preceding section.

I might say this. I know that there's been some statements with reference to the requirements of the bonding attorneys on this particular provision in the constitution. Be that as it may, I don't believe there is a single lawyer who is a member of this delegation, or any place else, would say that the legislature would not have the authority to do anything that's provided in this particular section, whether this...we adopted this section or not. It's just as simple as that. To me, I think it's just excess verbiage that we don't need. But that's the only argument that I want to make, and that was the argument that I made on a previous section. I just think it's entirely unnecessary, so it's up to you.

I hope you won't vote against the amendment just because I proposed it.

Further Discussion

Mr. Perez Delegates, as was stated earlier by Mr. Kean, we've taken twenty-seven different agencies out of the constitution. We want to make it perfectly clear, so we will not have to have an abundance of amendments in the future, that these special districts of the legislature could grant this authority. I, therefore, oppose the De Blieux amendment and ask you to adopt the section at the proper time.

Question

Mr. Womack Mr. Perez, doesn't this get back to where we were while ago, that the bond attorneys say that we've got to have this in order to get the best rate on our bonds and in order to sell them?

Mr. Perez Yes, sir, that's correct.

[Previous question ordered. Amendment rejected: 10-4. Motion to reconsider tabled.]

Amendment

Mr. Poynter Delegate Champagne sends up the following amendment...Champagne.

Amendment No. 1, page 12, line 19, immediately after the word "proper", change the comma to a period and delete the remainder of the line and delete lines 20 and 21 in their entirety.

Explanation

Mr. Champagne This amendment simply stops and would say, "powers and authorities as it deems proper." The rest of the sentence simply says, "such as" but not necessarily so. I would assume that most of the delegates in this convention hall have...have been, or at one time the majority, did get married, for instance. You went through the procedure; it was rather a short thing, and you weren't...you were in a hurry to get it over with. They didn't tell you in that explanation that part of the marriage ceremony was that you might have children, that you might have to cook, that you might have to change diapers and a lot of other things...both men and women. They didn't go through all these things; and probably it's a good thing they didn't, because when I changed a few diapers, I might add, you know, at that time, I might have re-

and that's what we need in this constitution.

For one brief moment yesterday I thought this convention, C.C. '73, might be referred as my grandpa once described, "greased lightning." I think it's time for us to be recognized somewhat in those terms as "greased lightning." I would suggest, and I implore you, not necessarily in order to prove that none of my amendments might piss, but I would ask you that this says, and I would ask that you give the Revenue, Finance and Taxation Committee the same courtesy you just afforded Natural Resources in taking out that provision. I can assure you that when the time comes that this committee should include the bonding provisions as some of you fear, we, I think are, and I would hope, capable of taking care of all of those instances. I would ask that you say, "such as", but not inuding. I ask you to remember the time you did or might get married, and that's all this does. I ask once more for all... I don't know if Mr. Perez will or will not agree that maybe his committee might agree to this statement, this amendment, but I hope he would.

I ask, simply, let's get to it. Let's refer to this thing as grandpa used to say, "greased lightning," and I urge the adoption of this amendment.

Questions

Mr. Anzalone Mr. Champagne, are you aware, because of that short, short ceremony that you were talking about a few minutes ago, that the law books of this state are filled with divorce laws?

Mr. Champagne Yes, sir, but I bet they wouldn't have been married so much if they'd had a long one to go through.

Mr. Anzalone Now, Mr. Champagne, do you further realize that we're talking about here is not getting married, but trying to make it a permanent thing? I think we're talking about the industry so that Mr. Lennox can represent them, and Mr. Flory can fight them?

Mr. Champagne Mr. Anzalone, I think what we're trying to do is give the lawyers something to do. This may help.

Mr. Anzalone Do you realize that if we give them something to do and make it just a little bit simpler, it might not cost as much?

Mr. Champagne Yes, sir.
Anything you say, Mr. Anzalone.

Mr. Kean Madam Chairman, fellow delegates, I hate to throw cold water on the hopes of my friend, Walter Champagne, but I rise in opposition to his amendment.

This particular section was carefully thought out by the committee in cooperation with a group of bonding attorneys in an effort to get into the constitution a concise provision covering the authority of the legislature with respect to these special districts in all of its aspects, and particularly with respect to the question of taxation and the right to incur debt and issue bonds. I am concerned, that if we delete this language from the section, that we are back where we started, raising the question of whether or not we have to go to the constitution with multiple amendments in order to accomplish some particular objective in connection with a special district. If we are going to put the rest of it in, then let's leave the last line alone. I think it is better to leave the last line alone and let the committee handle the rest of it.

Mr. Champagne Mr. Kean, I think the committee is going to handle the rest of it.

of these other things, could they not limit this board or agency from taxing at all?

Mr. Kean That's correct.

Mr. Fontenot O.K. Then, why do you need this language? I think we should go ahead and allow them to do it. Is that correct? We don't really need the language in there. Is that correct?

Mr. Kean Mr. Fontenot, we were using this as a vehicle to make certain that we had a constitutional provision under which the legislature clearly, without any question, without any ambiguity, had the authority to create these districts and authorize them to levy taxes and issue bonds.

We are simply trying to buy some insurance that we are not going to get back into the same kind of a problem we've had before... somebody saying that under the general authority, maybe you don't have the right to do it; therefore, we've got to have a constitutional amendment.

Mr. Fontenot O.K. But then these bonding attorneys that were so concerned, suppose the legislature doesn't grant the power to tax? Then they're not helped out at all. So really, this provision's not helping them at all.

Mr. Kean The legislature does not grant the authority then that is as it should be. They shouldn't have the authority.

Mr. Lambert Mr. Kean, if this convention should decide to delete this section, could it be covered adequately under revenue and taxation, in your opinion?

Mr. Kean Well, if you took this section and put it over in revenue and taxation, I guess.... I suppose it could, Senator Lambert. But why delay action on this in order to take it up sometime later under revenue and taxation?

Mr. Lambert Well, I'm not speaking in favor of the amendment. I just wanted to ask that question. I've heard a number of people ask that around me on the floor.

Mr. Anzalone Mr. Kean, if we had this section in the constitution already, you would agree it would be repetitious, right?

Mr. Kean No, we do not.

Mr. Kean Mr. Kean, what Mr. Champagne is doing to delete, is not that really the heart and soul of this particular section--that the bond attorneys have considered the most important thing that you can put in there, and that if it's eliminated, it could be detrimental to the rating of our bonds on the market once they are issued?

Mr. Kean I think the committee is going to handle the rest of it.

Mr. Kean I think the committee is going to handle the rest of it. I think the committee is going to handle the rest of it. I think the committee is going to handle the rest of it.

Mr. Kean I think the committee is going to handle the rest of it. I think the committee is going to handle the rest of it. I think the committee is going to handle the rest of it.

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Mr. Roy That's to protect a few bond attorneys who don't want to risk saying that the legislature may have been wrong. And you constitutionalize it so that, even if it's wrong, it's O.K. Isn't that true?

Mr. Kean Mr. Roy, I could care less about what the bond attorneys want. We've got political subdivisions that'd have to issue bonds. We've got from time to time districts that have to be created to take care of special situations. We are simply trying to get something in here that would avoid the necessity of additional constitutional amendments. That's the whole purpose of the...

Further Discussion

Mr. Gravel Madam Chairman, ladies and gentlemen of the convention, I'm...I'm really surprised at Mr. Champagne with his proposed amendment. Here we are dealing with some banker's language, and he wants to delete it. Well, all of the lawyers here throughout the entire course of this convention have been listening to Mr. Champagne. He has rated our prime interest, and we think that his prime interest rates consideration, not only by him but all bankers, for the necessity of including in this constitution, a provision that's going to satisfy the bonding attorneys who honestly believe that these provisions are essential and necessary. I think that it is important that we do maintain the concept in Section 22, so that under no circumstances can there ever be any question that our bonding procedures, or our taxation procedures for the benefit of local government and local subdivisions, can be adversely affected.

I urge you to reject the Champagne amendment. That we adopt Section 22, and that we continue to grease this lightning and move on.

[Innocuous question asked.]

Motion

Mr. Champagne In fear that we may have to go to a lengthy discussion of how and why you got married, I would like at this time, if at all possible in view of Mr. Gravel's grievances, to withdraw my amendment.

[Motion to suspend the rules to withdraw the amendment adopted without objection. Question on motion, passed on the yeas and nays. Motion carried.]

Reading of the Section

Mr. Poynter Section 23. Intergovernmental Cooperation

Section 23, Paragraph (A) Any political subdivision may exercise and perform any of its authorized powers and functions...

[Motion to suspend the rules to read the section. Question on motion, passed on the yeas and nays.]

Explanation

Mr. Reeves Section 23 is a new section, basically, from the 1921 Constitution for this simple reason. We've had a tremendous amount of federal and state assistance to the local and parochial governments throughout the last fifty years. Of course, any of you that are aware of the problems that local and parochial government have, will realize that it is absolutely a necessity for the local governments to have the assistance of the federal as well as the state government.

This particular provision authorizes intergovernmental cooperation between political subdivisions, and between political subdivisions and the federal government. This particular section prohibits the legislature from requiring intergovernmental cooperation between political subdivisions, but it does allow the legislature to authorize intergovernmental

cooperation between political subdivisions subject to voter approval. This is not, I emphasize this very strongly, it is not regional government... absolutely, unequivocally, no contest, it is not regional government.

So, for those individuals that are afraid of a new concept that is coming out in the planning field throughout this nation, known as regionalism, in which local governments are basically delineated to substandard organizations, and that regional governments or quasi-governmental organizations are established over these local governmental subdivisions, do not be afraid. This is not regionalism. It is not regional autonomous government, and it does not replace the local and parochial governments. All we are trying to do in this particular section is to authorize the local governmental subdivisions to cooperate and to have intergovernmental cooperation between themselves.

First of all we realized, and we are realizing, that throughout the State of Louisiana we do have a number of organizations known as the Economic Development Districts in which we have cooperation between a number of parishes. In my particular area, we do belong to the Kisatchie Delta Economic Development District, or it is eight parish, now eight parish regional organization. It is not the regional government concept. It only authorizes, in this particular section only authorizes intergovernmental cooperation between consenting governments. This particular provision also prohibits the Louisiana Legislature from mandating that these governmental subdivisions will cooperate with one another. In other words, if they will...it requires, it does not require intergovernmental cooperation, but it simply allows the legislature to authorize intergovernmental cooperation between the political subdivisions. If you have amendments to this section to delete some of the wordage out, and cut it down somewhat, I think we can all, including the Local Government Committee can possibly live with that.

But it is necessary in the 1973 Constitution, or 174 Constitution, that this particular provision, or at least the concept, remain.

Questions

Mr. Roemer Mr. Reeves, you said some seven times in your four minute remark that this is not regional government. Perhaps you protest too loudly and too long. It raises some suspicions as far as I'm concerned, when I read it, that it's exactly that.

My question is if it's not regional government, what is it? What does this language mean... "any political subdivision may exercise and perform any of its authorized powers and functions, including financing, jointly or in cooperation with one or more political subdivisions, either within or without the state." Well, if that's not an authorization for regional government, what is it Terry?

Mr. Reeves All we're trying to do, Buddy, is to...what I'm saying is it is not the concept of necessary regional government. In other words, when you've got mandated regional government, if you want to have cooperation between political subdivision, within or without the state, then this particular provision is permissive. In other words, what we are saying is, a number of local governments cannot handle their own particular problems as well as a combination of local governments.

For instance, in our parishes in North Louisiana, possibly, for instance on the garbage collection, we found it...as a planner, we found that two or three, or maybe four parishes can get together and have a sanitary landfill. Of course, we do not have any of these as of yet, and more economically than we would if we could do it by just one parish.

Mr. Roemer Well...would you not agree that all Paragraph (B) does is prohibit the legislature from requiring regional government? But (A) gives them all the framework they need to enact regional government provisions.

Mr. Reeves Correct, and again in fact we just

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Mr. Burson Yes, Mr. Denberry, for this reason. There are too many in the areas where we use the general term that did not apply to school boards, so we'd either have to do one of two things, either exclude school boards where we don't want them to have the power, or include them where we want to make it plain they should have the power, and we're taking the latter tack because it seems to me to be a better way to approach it. Just to include school boards specifically where we want them to share in a particular power.

Mr. Pugh The thrust of mine was somewhat the same as his as to whether or not, as a matter of fact, a school board wasn't a political subdivision. If we start distinguishing all the way through this constitution between political subdivisions or school boards, we're going to have to go back and amend something we've already done, much less these. I think it's a danger trying to assume that a school board is not a political subdivision, when in fact, it is.

Mr. Burson Mr. Pugh, there are cases on the books in Louisiana, with which I happen to be familiar, that has said that school boards do not share. For instance, immunity of political subdivisions of the state that have said that school boards were not immune from prescription. You will note in the Prescription Article in local government, I specifically included school boards there. The reason behind that is that I knew there are lawsuits--cases on the books--that have said that the immunity from prescription of the state and its political subdivisions did not extend to school boards.

Mr. Pugh I am aware of the fact that there has been some watering down. I say, is it not a fact that a school board is a political subdivision? Either it is or it isn't!

Mr. Burson Mr. Pugh, I just don't want to leave any possible ambiguity. With the cases on the books saying that it's not, I don't want to leave any doubt in the area where we want them to have the power, that they are included. Now, if we come up with a definition of local governmental subdivision that would include them, then fine. But, I think if we do that, then we're going to have to turn around and exclude school boards from a lot of the powers that we've given local governmental subdivisions. For instance, in Articles 7, 8, and 9, I don't think we want school boards to be exercising that broad scope of power. They are a limited purpose operation, just for public education.

Mr. Pugh Well, what was the thinking of the committee when they put the section in like it is without "or school boards" in there?

Mr. Burson I don't know.

Mr. Sandoz Jack, wouldn't it be more simple instead of inserting these amendments at different places in this proposal to merely make an amendment to 51(2) to define a political subdivision as including school boards?

Mr. Burson The problem we get into there is there are many, many articles that give powers or define the powers of local governmental subdivisions, that have nothing to do with school boards, and that we would not want school boards to be involved in it.

Mr. Sandoz But, the definition section as being a part of this article--wouldn't that specifically clear that up?

Mr. Burson I'm afraid then we'd have to go back and exclude school boards from those areas where we didn't want them to exercise the power such as Sections 7, 8, and 9...or in order of the finance provision, for instance, where we say that local governmental subdivisions have certain powers to tax, and so on.

Further Discussion

Mr. Perez There is no objection to the adoption of the amendment, and I'd like to just clarify the fact that there are certain areas where political subdivisions--where school boards should be included as political subdivisions, and there are others where they should not, and it is the intention of the committee at a later time, when we get to the definition section, to exclude school boards under the definition of a political subdivision, and then include them in each case where the specific authority should be given to school boards to do certain things. This amendment would make it consistent with the overall plan of the article, therefore, I urge you to adopt the amendment.

[Previous Question ordered. Amendments adopted: 92-13. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1. On page 12...this is offered by Delegate Pugh. On page 12, delete lines 23 through 32, both inclusive, in their entirety and on page 13 delete lines 1 through 8, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 23. Except as otherwise provided by law, any political subdivision may, but shall not be required to, exercise any of its authorized powers and functions, including financing, jointly or in cooperation with one or more political subdivisions, either with the state, the United States, or agencies thereof."

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, I think this expresses the intentions of the committee. It does delete the objection that was raised as to whether or not one of the political subdivisions could do business with Cuba or Russia or some other country, and it limits their rights to do business with other political subdivisions, either within this state or within the United States, or any agencies either within this state or within the United States. Other than that it does not change any of what the committee was attempting to accomplish in its many lines of language. I yield to questions.

Questions

Ms. Zervigon Mr. Pugh, I understand your intention, but I'm worried about the words that are being used. You say "any political subdivision may, but may not be required to exercise any of its authorized powers or functions." Required by whom?

Mr. Pugh Well, by the legislature. There was your section in the committee--perhaps you're not on the committee, I don't know--but the committee wanted that language in that you couldn't make them do it. You wanted to allow them to do it but you couldn't make them do it, and that's the purpose of the language "but shall not be required to."

Ms. Zervigon Mr. Pugh, isn't it a fact that sometimes the federal government requires regional cooperation before federal funds can be applied for?

Mr. Pugh Lady, if they don't want to cooperate to the extent of getting the funds, then that's perfectly all right.

Ms. Zervigon But they may...you're saying that they may not be required to by the federal government.

Mr. Pugh No, ma'am. There's nothing we could put in this constitution that can in any way bind the United States government through its own constitution.

Ms. Zervigon Well, my problem with it is---it seems to me that in order to be allowed that regional co-

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cal subdivision may exercise," and so forth, "except as the legislature shall provide otherwise by law," which means that they've got to come and take it away from them.

Mr. Pugh That's right. In other words, there's no difference insofar as the legislature is concerned, between my amendment and the original proposal by the committee.

Mr. Perez Except that it would have to be a prohibitory situation under the way the committee prepared them.

[Previous question ordered.]

Closing

Mr. Pugh I don't wish to labor the issue. I merely wish to add the words "or school board", at the request of the gentleman to my left, after the words "political subdivision." I withdraw the amendment for that purpose. I reoffer the amendment with "or school board" added to it.

Mr. Poynter The previous question has already been ordered, Mr. Pugh. I think Mr. Burson's got some amendments prepared that are up here that would have that effect....just let it go as it is.

[Amendment rejected: 22-77. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Flory]. On page 12, line 26, after the word "within" and before the word "the" delete the words "or without".

Explanation

Mr. Flory Madam Chairman, and delegates to the convention, what the amendment does, as read, was on line twenty-six, delete the words "or without." Now, the reason for the amendment, of course, is to prohibit a political subdivision, or one or more, not necessarily from forming joint agreements with either the other states, but particularly, I don't believe that we ought to allow a political subdivision, or the state or anybody else, to contract or enter into an agreement with any foreign power or agency thereof. That's what this amendment does, is to take out that possibility that one of our political subdivisions might form some agreement with a foreign power or a subdivision or agency thereof.

Questions

Mr. Denberry Mr. Flory, as I understand your amendment, it would prohibit an agency of this state from entering into a contract with an agency of another state within the United States. Now, I don't think you intended that, did you?

Mr. Flory It would do that, Mr. Denberry, as I said. My objections don't necessarily lie in that direction, but in the way that the section is worded, it allows interstate compacts which the legislature has rejected on repeated occasions--the state, with other states, in forming compacts. It also applies to foreign powers. My main objection is to the foreign power, while I am still opposed to the regional government concept.

Mr. Denberry Well, I agree with the second part of your reasoning, but what bothers me is that, for example, the Educational Television Authority might well want to contract with the Mississippi Educational Television Authority to get some programs from it, or to sell some programs to it, and would this prevent that?

Mr. Flory Possibly it could, yes. I'll be honest with you.

Mr. Perez Gordon, there was no intention, of course, that this amendment would apply to any foreign power, and so forth, and I'm sure if anybody...but the thing that I'm concerned about is I know, for instance, that we have levee districts which extend beyond the State of Louisiana into an adjoining state, and I was hoping that we do have a provision on levee districts which authorized that--I was hoping we could knock it out of the levee district section if we had it in here, and I'm afraid that we may be getting into a problem with respect to some of the border parishes not being able to cooperate with adjoining counties or parts of counties or levee districts in an adjoining state.

Mr. Flory Madam Chairman, could we have about a one minute recess? I think we could resolve it then, if that's the issue, without any problem whatsoever.

Mrs. Miller We'll stand at ease for about three minutes.

Recess

[Quorum called: 56 delegates present and a quorum.]

Motion

Mr. Flory Madam Chairman, and delegates, I would like to now withdraw the amendment, and suggest to the convention that we pass over this section because we have, in our discussion here which I thought was extremely fruitful, brought up some very serious problems that we face on this section insofar as the parts of this state and all are concerned with international trade. Nothing we want to do here, of course, do we want to interfere with that. So I would suggest, and I believe that a compromise can be reached on this issue, and ask that you would pass it over to give us an opportunity to do that, so that we will not do violence to the international trade aspect of our state's economy.

[Motion to pass over Section 23 adopted without objection.]

Reading of the Section

Mr. Poynter "Section 24. Assistance to Local Industry by Political Subdivisions
Section 24. (A). Subject...

[Motion to skip reading of the section adopted without objection.]

Explanation

Mr. Cannon Ladies and gentlemen of the convention, the committee worked long and hard on this, and I think it bears your serious consideration. What we have tried to do is distinguish the difference between industrial areas and industrial inducement districts, or as commonly known, industrial districts which are primarily methods of financing. This gives the legislature the power to authorize--this is not any takeoff from what presently exists--to authorize political subdivisions to induce industry to come into our state and locate by providing a financing vehicle with it. The departure is to extend the authority to deep-water ports, particularly those which handle bulk liquid cargo. I think that we should provide them additional revenue raising powers and functions. Again, this is simply what it is today with the exception: Deep-water port commissions all over the State of Louisiana have the power of industrial districts, with the

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that we would, which provides that all existing deep-water ports, these ports that are engaging in foreign commerce that can accommodate vessels of twenty-five feet of draft or more, would be transferred in and out of the Commission. In the fact that the Greater Baton Rouge Port Commission could not have the power of industrial inducement such as the Lake Charles Port, Harbor, and Terminal District in South Louisiana, and the Port of New Orleans. I've tried to move around the convention, and explain this particular section and answer any questions before we get here in the interest of saving time. If any of you have any questions, I'd be glad to answer them.

Mr. Alexander I notice one section here which has reference to agreements between, or by the parish, either with the state or any other political subdivision, and the language here could mean even outside of the United States.

Mr. Cannon. Reverend Alexander, we are now on Section 24. This is Section 23 which was withdrawn because of a serious problem--a serious concern that Melroy had raised, and I think the committee and several other members of this convention will be looking seriously at...that has been passed over. That was Section 23; we are now on Section 24, which is industrial inducement districts--the power of the legislature to authorize them to their various political subdivisions.

Mr. O'Neill Harvey, you gave us an example, I think, here in Baton Rouge that you were talking to us about earlier, where I understand the local governmental subdivision passed something like a fifty million dollar bond issue to install pollution equipment in local industries here. Could you give us that example?

Mr. Cannon Yes, sir. This was part of Environmental Protection Agency's requisites. Mr. Keane was the attorney handling the bond sale, I believe, for Exxon--where they were mandated by the federal government to clean up all the rain water and all of their waste. I hope the people in Jefferson and Orleans parishes are not going to be asked to pay for industrial revenue bonds were used. It was not an obligation upon taxpayers of this state. These bonds were used through the public industrial bond vehicle based on the financial statement of Exxon, which is pretty good, and this is not an obligation on the taxpayers of East Baton Rouge Parish. I hope I have not been too technical. What do you think? I think ports, because they are right there with their hand on the pulse of industry.

Mr. Pugh Sir, does not the second line of this section provide, "the legislature may authorize"? Is it not true, we've already, in the legislative section, authorized them to do what you all contemplate doing here?

Mr. Cannon: Yes, sir, it does, and I think that "the legislature may authorize," it implies a prohibition for every political subdivision of this state, without the legislature's authority, from going off selling bonds and placing the financial security of this state in jeopardy. I think that is all that is involved in this question, and that is all it without this authority.

Mr. Hays: I understand that the question was asked: "Is the substance of that bill what is usually available to the public?"

It is important to say it appears to me to be a gradual, then violent political transformation from being this or that sort of institution to the power of political subdivisions.

subcommittee, I think that what we did in the
We should have a definite definition of what a deep-
water port is? If we're going to ratify all of
these other port authorities throughout the state
that we took out of the constitution, I think it is
more than proper at this time to have a definite
definition of deep-water port. This seems to me a
quize that we shouldn't get into right now.

Mr. Cannon: That's correct. I suggested in the committee that we really take up definitions first. If the convention will look on page 28, the last page of this proposal, definition eleven at the bottom of the page--deep-water port commission and deep-water port harbor commission. The latter means those commissions or districts within whose territorial jurisdiction exist facilities capable of accommodating vessels of at least twenty-five feet of draft, and engaging in foreign commerce. I feel sure that the Lake and River Port Commission would probably include vessels of their draft of ninety feet, but they're not engaging in foreign commerce, and therefore, I don't think Lake Providence, in this instance, would apply. But, certainly, the Port of Baton Rouge, the Port of New Orleans, the Greater Baton Rouge Port Commission, the New Orleans Port Commission, the Lake and River Port Commission, and the South Louisiana Port Commission are certainly all deep-water ports presently existing in our constitution. The question was raised as to why "deep-water ports" has to be in here. This was raised by bonding attorneys who questioned as to whether or not the State of Louisiana, which is an agency of the State of Louisiana, and the Greater Baton Rouge Port Commission, which is a branch of the executive branch of state government, are in effect, political subdivisions. The question was raised by bond attorneys, that's why the language is in there, gentlemen, to make it specific.

Mr. Jillo Don't you feel that we should have
further clarification until we air out everything
before this convention as far as ports are con-
cerned?

Mr. Cannon. Mr. Dr. Ullo, I'm going to have to disagree with you. I don't think so, because what we're talking about is a general concept of deep-water ports. Now, wherever they are and wherever they happen to be, and I liked Mr. Guarisco's statement that they don't depend on a particular geographic section, if Morgan City were, say, to begin engaging actively in foreign commerce and accommodating vessels more than twenty-five feet, I certainly think that they would qualify as a deep-water port, and the legislature has provided that they be granted

found and declared that the purpose designed to be accomplished herein are public and proper legal purposes and it would be a public benefit to the political subdivision. Does that obviate all we did in Section 4 of the Bill of Rights with respect to expropriating property, and does it mean that anytime the legislature says in 24 (A) that it is doing it for any of those purposes, that it can never be litigated?

9. Cannon: "I say, don't ever accept the idea that the Government is to create jobs where people will work and earn a living, rather than become dependent."

not, you know. We may get into a question that they try to...I'm not criticizing maybe what the intent

Mr. LITTON. Will that be included and considered in the amendment currently pending?

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Mr. Poynter Amendment No. 1 [by Mr. Jenkins], on page 13, line 22, after the word "acquire" and before the word "and" insert the following: "by purchase, donation, or exchange"

Amendment No. 2, on page 13, line 24, after the word "acquire" delete the remainder of the line and at the beginning of line 25 delete the words and punctuation "or otherwise," and insert in lieu thereof the following: "by purchase, donation, or exchange"

Amendment No. 3, on page 13 delete lines 29 through 32, both inclusive, in their entirety and on page 14 delete line 1 in its entirety.

Explanation

Mr. Jenkins Mr. Chairman, delegates, let me call your attention to Section 27, which is entitled "Acquisition of Property". You'll notice in there that acquisition of property is granted to any political subdivision and defined as "acquisition by purchase, donation, expropriation, or exchange." So, when you grant to a political subdivision the authority to acquire property, you are giving it the power to expropriate property. Now, the effect of the first two amendments is to make sure that these industrial districts cannot acquire property by expropriation to give industrial plant sites to people or industrial plant buildings. If you'll look at Amendment No. 1, it affects line 22, and it says that "when industrial plant sites are acquired, they can be acquired by purchase, donation or exchange." But, you shouldn't allow private companies to have the authority via the state to go out and seize people's sites and then build industrial plants on them. That doesn't make sense; there's too much industrial land available to allow that authority. The second amendment is on line 24 where it says, "to acquire through purchase or otherwise." The amendment says, "to acquire by purchase, donation or exchange." Now here we're talking about the acquisition of industrial plant buildings or industrial plant equipment. Surely we don't want these districts to be able to acquire industrial plant buildings or industrial plant equipment, machinery or furnishing, by expropriation. That would to favor one aspect or one group of our population at the expense of another. The third amendment takes out Section (B). Now, Section (B) has no place in this constitution. Here's what it says; it says "it is hereby found and declared that the purposes designed to be accomplished herein are public and proper legal purposes, and will be of public benefit to the political subdivision, Deep-Water Port Commission," or so forth. It is impossible for us to say here that any given deep-water port or industrial district or political subdivision will do things that are of a public benefit in the future. That is a question of fact to be determined under the circumstances at that time. The question of public purpose, of course, plays into this expropriation question because if you say it's a public purpose, then they can expropriate under it, but it just doesn't make sense. It's a legal fiction to say that in every circumstance any acquisition of property by an industrial district or a deep-water port or whatever is a public purpose. That depends on what they're taking. It depends on why they're taking it, and it just doesn't make sense to say that here in the constitution. So, I urge the adoption of these three amendments: to limit acquisition of industrial sites to purchase, donation or exchange, not expropriation; acquisition of industrial plant buildings and machinery and equipment to purchase, donation, and exchange, not expropriation; and to leave it to the facts of the case, in the case of Section (B), to determine whether or not it is a public purpose, in a given circumstance, as to what an industrial district does. So, I urge the adoption of these amendments. It doesn't really in any way affect the merit or the vitality of this section.

Further Discussion

Mr. Kean Madam Acting Chairman, fellow delegates, I call your attention to the initial part of this Section 24(A), which says, "subject to such restrictions as it may impose." It seems to me that that gives the protection that Mr. Jenkins would desire to build into the constitution, which at the same time, if built into the constitution, could well tie the hands of the use of this section in some instances. I can foresee, for example, particularly with respect to (A)(2), which talks about providing for the establishment and furnishing of industrial plants for the conversion or processing of raw farm or agricultural products. One of the earliest uses of this particular type of governmental financing for industry purposes occurred in the parish of Washington, where there was a great surplus of milk at that time and a need for some means by processing of converting that milk. Under the circumstances, through the use of industrial revenue financing, they were able to build a milk processing plant. Now, it might entirely be possible in order to carry out a program such as that, in order to acquire the property they need for the purpose of building that processing plant, that you might have to expropriate. On the other hand, most of the financing that's done pursuant to this section, is respect to industrial revenue financing where there's no need to utilize expropriation. You work it out with the industry and there's no problem involved. You don't take anybody's property. You simply have the industry which already has the property or itself acquires it. It seems to me we need to have the flexibility that's built into this section to acquire the property or the sites, and so forth, through purchase or otherwise, and leave it to the legislature to impose such restrictions with respect to the use of this authority as it may see fit. I don't think Mr. Jenkins' amendments would necessarily kill the section, but it would certainly cripple it, and it would certainly reduce or prevent its use in areas in which there might be some need for the right of expropriation to carry out a particular program. As long as the legislature has the right to impose such restrictions as they might wish to impose, I think we've got to have the...we've got to have confidence in the legislature to properly protect the property rights of the citizens of this state, and that gives them the ample authority to do it in the instances where it's necessary for that purpose. So, I suggest to you that we reject the amendment and adopt the committee proposal as presented.

Questions

Mrs. Zervigon Mr. Kean, I'm looking for some clarification on this point of declaration of a public purpose. If you declare that industrial inducement in general is a public purpose, do you necessarily ratify every act that anyone may take claiming that he is acting under that general authorization?

Mr. Kean The design of the second part would just simply be a recognition that this type of financing constituted a public purpose. It would obviously be a question for the courts to resolve, in light of the language that was used in the prior section, as to whether or not it, in fact, was a public purpose.

Mrs. Zervigon But it wouldn't prohibit the courts from speaking on every single case that came up?

Mr. Kean No.

Mrs. Zervigon The question would be if it were indeed implementing the public purpose of industrial inducement.

Mr. Kean That's correct.

Mrs. Zervigon Thank you.

Mr. Roy Mr. Kean, I appreciate your candor, and you do admit that this whole section, then, implies

Mr. Jenkins: The question is, if you're able to expropriate people's property, do you

Mr. Roy:

Mr. Jenkins: That's the point of it, isn't it?

Mr. Kean: The authority...no, the purpose of it is to provide a means by which you could constitutionally carry out industrial inducement programs through financing.

Mr. Roy: No, but you do admit that Mr. Jenkins's amendments, insofar as if people want to pay attention and listen to what's going on about it, do prevent expropriation of private property for industrial site developments by industrialists who come in. Is that right?

Mr. Kean: This relates to action by any political subdivision or by the deep-water ports. It's got nothing to do with any individual who comes in.

Mr. Roy: Whatever they do, if the industrial port decides that it...it thinks that it ought to expropriate property, under you all's provision, it may do so. Is that right?

Mr. Kean: If you had a situation where the Port of New Orleans wanted to bring in a particular industry which it thought was desirable for port purposes, and was going to do it through revenue financing, it would have the right under this to acquire a site by expropriation, if necessary, in order to do it.

Mr. Roy: All right. Then it, also, means that, subject to only the restrictions that the legislature places on it, that expropriation would take place and if the legislature said you'd only be paid for your assessed value of your land, that's all you'd have to be paid for. Isn't that right?

Mr. Kean: I think you've covered that over in the Bill of Rights, Mr. Roy.

Mr. Roy: No, no, because you see this says, "subject to such restrictions as may...it may impose, the legislature may authorize" and since we're dealing with a specific thing, I think that the legislature could simply say, "we don't give you a jury trial in this matter either."

Mr. Kean: Well, I don't think that gives the broad authority of the legislature to say you could take it for nothing. No.

Further Discussion

Mr. Jenkins: Chairman and fellow delegates, to support Mr. Jenkins' amendment, and I know it's somewhat confusing, given the day of the day...given the time of the day and given the nature of the hours we spent on this section and given the complexity of this section. I think it is important, as Mr. Jenkins pointed out here just a few moments ago, to stand up now in this constitution, clearly again, on this matter of expropriation of a man or a woman's property, an individual's property. This section,

23 "The funds derived from the sale thereof, to inquire, to acquire and improve industrial plant sites," allows bonds to be issued for that purpose. I want to know the nature of such acquisition could be, you'll see on page 14, now, Section 27, it says "subject to such restrictions as the legislature may provide by general law, political subdivisions may acquire property for any public purpose, including but not limited to acquisition, by purchase, donation, expropriation or exchange. Now, all Mr. Jenkins is doing is saying, "O.K.,

out the expropriation factor." He would still

limit these deep-water port facilities from their public purpose being used to expropriate private property. Now, that's all that's involved here. I say that's all--one word--but I think the word should be of enough concern to us as private individuals as to allow for the donation, to allow for the purchase and acquisition, but not allow--let's don't allow expropriation in this matter. I think that's what the Jenkins amendment does, and I urge you to support it on that basis. It quite clearly gives us this one limitation in regard to expropriation that we need. I wish you'd study it closely and let's give Woody a favorable vote on this because I think he's doing us all a favor without doing injustice to the deep-water ports.

Questions

Mr. O'Neill: Mr. Roemer, doesn't this help conform more to the right to property, which this convention adopted in previous sections, and help protect private property?

Mr. Roemer: Well, there's no question of that, and I think Woody has kept up his history in this convention of looking out for our property, certainly a vital right to it, and I make the point again, Mr. O'Neill, he's looked out for our rights in this area without harming the deep-water ports, I think.

Mr. O'Neill: Well, another question, and maybe it's facetious. Would you say that this particular provision is the clear, concise language that we all told the people we were going to write in the constitution?

Mr. Roemer: Well, of course, I think not.

Mr. Roy: Buddy, you remember our discussion and all the fight we had on the Section 4 with respect to municipalities expropriating utilities for the benefit of the public? Do you remember that?

Mr. Jenkins:

Mr. Roy: And we had to show they'd have to pay a fair market value. This thing actually just does away with all that discussion, doesn't it?

Mr. Roemer: I agree. It just goes too far, and I don't think the committee intended for it to go to that far, quite frankly. If they did, I think they were mistaken. If they didn't, certainly Woody's language clears it up.

Mr. Jenkins: Now we're back to the question, wouldn't it be possible for them to take away somebody's land, cut the grass, and then use it as a site to somebody else, because they would then have improved the property?

Mr. Roemer: Absolutely. Take it out of my mind, it's to boggy my narrow mind, and it doesn't take much to boggy it, but this has done it.

Mr. Drew: Buddy, I think you have to make a distinction between what we refer to as industrial areas, but what latitude does a port have in expansion or... Well, we'll buy what we can buy, and put a port there. Don't you think a port authority has to have this right?

Mr. Roemer: I think there's a distinction between what we refer to as industrial areas, but what latitude does a port have in expansion or... Well, we'll buy what we can buy, and put a port there. Don't you think a port authority has to have this right?

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Mr. Roy Thank you, Madam Chairman. Ladies and gentlemen of the convention, I know the hour is late and we may want to get out of here, but we're just really getting into a problem here. We fought for three or four days on Section 4. We went over the property rights. There are very few people in here, I think, who are as liberal as I am about the rights of government to do what it can for the people, and I'm really concerned about this, and I was concerned in Section 4, and I thought we had fought that battle, and here, all of a sudden we have coming right back at us the right of a legislatively created body of some sort of another to come in and start expropriating people's property for what they think may be a good purpose. I'm not against that thought at all, about good purpose and helping out...helping industry, but if this thing goes too far, we've just denuded everything we have done in Section 4, and I'm really concerned that the people aren't really paying attention to what's happening here. Then we go to Section (B) and irrespective of what the other gentlemen feel, when you constitutionalize and say, "it is hereby found and declared that the purposes designed to be accomplished are public and proper legal purposes and will be of public benefit to the political subdivision," it's hard for me to see how the district court saying that "I'm going to rule that this is not for a public purpose." Now, when the same committee tried to say that the provisions of this local governmental article would be liberally construed in favor of the political subdivision, you remember what a hassle that raised. Everybody knew better than that, and we took that out, and here we're going right back again and we're constitutionalizing, saying that as long as the legislature says that under 24(A), for these one, two, three, four, five, whatever it is, reasons we're doing this, I don't think a court will be able to determine this issue, and it should be darn clear that it can't, and at best you have mere something that is ambiguous. I rise in support of the Jenkins amendments. I think they are good, and I think you ought to vote for them, and I'll yield to questions.

Questions

Mr. Cannon Mr. Roy, did you know that every deep-water port in the State of Louisiana right now has power of expropriation?

Mr. Roy I know that, and I wouldn't mind you spelling it out, but not saying "subject to such restrictions as it may impose, the legislature may," because the legislature may say that all they have to pay is the assessed value of the property front henceforth.

Mr. Cannon Did you also know that the only deep-water port in the State of Louisiana which does not have industrial inducement district authority in the existing constitution is the Greater Baton Rouge Port Commission? This was an inequity; we tried to take the language and make it broad and general to apply to all deep-water ports. Did you know that?

Mr. Roy As a matter of fact, I wasn't aware of that, but that doesn't change my opinion about what trouble we are getting into on this particular

Section.

Mr. Derbes Mr. Roy, isn't the committee proposal subject to Section 4 of the Bill of Rights, Article 4?

Mr. Roy I don't think it is.

Mr. Derbes You don't think it is?

Mr. Roy I don't think it is because it says, "only subject to the restrictions imposed by the legislature," if you read the first sentence. This is a special section dealing with a special problem, and I would think that they could argue they are not subject to the provisions of the court.

Mr. Derbes No, what I'm suggesting to you is it

would seem that anything other than a purchase, donation, or ordinary acquisition would have to be an expropriation, and that would ipso facto make it subject to the provisions of Article IV of the Bill of Rights, wouldn't it?

Mr. Roy Well, it could, but to the extent that would...when you talk about the right to the jury trial to determine the compensation, the legislature could say, "You're not entitled to that," when they expropriate under 24. Read the first sentence.

Mr. Derbes All right. Let me take it a step further. You don't think that the legislature's authority in this area could be trusted? Is that essentially what you're saying?

Mr. Roy Well, we're talking about...I'm not talking about trusting individuals; I'm talking about a principle. Presently, the idea of taking land for levees, I don't agree with, that you shouldn't be paid what you're owed, but you can. No, my answer to that is, "No, I would not trust the legislature here with respect to that issue."

Mr. Derbes I wouldn't mind spelling out the provisions of expropriation in this area, or changing the language of the opening clause of the sentence, like "subject to the provisions of Article IV of the section," but to completely delete the right of expropriation, when it's subject to legislative authorization, seems to me to be a real hamstringing.

Mr. Roy Well, that's the difference in our philosophy, Mr. Derbes. I just don't believe that people can go around expropriating other people's property without real good reason.

Further Discussion

Mr. O'Neill Ladies and gentlemen, I really wish we hadn't gotten into this today. I think we're all tired and we're about ready to go home, and we're tired of going back and forth from home rule to property rights. It's a shame that such factionalism has gotten into this convention that it's the same people arguing against the same people, and some of them don't even care what they're arguing about. I think that that's a bad thing to start; it's a bad thing to foster, and I think that maybe we should forget that right now, and think back to the time when we did decide to protect property rights in Section 4 of the Bill of Rights proposal, and you remember that. The people arguing against this amendment right now are the same people who didn't want to protect property rights. They didn't want to limit the state in its right to expropriate. I think this is a very carefully drawn amendment, and I know very well thought out, and I would, also submit, to you that the average ordinary citizen picking up this constitution and reading this section couldn't make heads or tails, or anything, out of what the section means and what it actually says, and what it actually does. I hope that you all pay attention to the debate very carefully. I know you're tired, and I want to go to the football game tonight and everything, but let's be real careful about what we do on the right to take people's property. I really don't even think the people who are against this amendment actually realize the extent to which the right to property would be violated by the adoption of this section as it is.

Questions

Mr. Pugh Quite frankly, I'm perhaps more concerned about the authorization to the political subdivision than I am the deep-water ports, insofar as expropriations are concerned. Is it not a principle of condemnation law that the person's property as condemned, just compensation paid to him, is that based upon the uses of the land then occurring and not its potential uses?

Mr. O'Neill Yes, sir. Exactly.

58th Days Proceedings—October 2, 1973

Tuesday, October 2, 1973

ROLL CALL

[81 delegates present and a quorum.]

PRAYER

Mr. Abraham Our Heavenly Father, we thank Thee for this day. We ask that You watch over us in our deliberations. We ask that You give us the wisdom and the courage to do what is good for the people of this state. Direct us in all our efforts and may our lives be for Thine end. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee:

A proposal making general provisions for local and parochial government, levee districts, and ports, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal is the committee has adopted as amended, Sections 1 through 23 of the committee proposal with the following exceptions: Sections 2, 4 and 10 have been deleted by action of the convention floor. Also the convention floor has passed over and has not completed consideration of Sections 19, 20 and 23. The convention further has presently under consideration Section 24. Assistance to Local Industry by Political Subdivisions, and in particular, had under consideration, at the time of adjournment on Saturday, proposed amendments by Delegate Jenkins to said Section 24, which have been previously read. To make sure that copies are available, new copies of these amendments are being distributed at the present time.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Jenkins]. On page 13, line 22, after the word "acquire" and before the word "and" insert the following: "by purchase, donation or exchange".

Amendment No. 2. On page 13, line 24, after the word "acquire" delete the remainder of the line. At the beginning of line 25, delete the words and punctuation "or otherwise," and insert in lieu thereof the following: "by purchase, donation, or exchange".

Amendment No. 3. On page 13, delete lines 29 through 32, both inclusive, in their entirety and on page 14, delete line 1 in its entirety.

Further Discussion

Mr. Cannon Ladies and gentlemen of the convention, myself and other members of the committee have prepared an amendment which will alter the committee proposal somewhat, and, I think, clean it up to the satisfaction of a majority of the people here. Basically, we are deleting the Paragraph (b) and we're coming...and we're asking to insert, somewhere in line 6, "the necessary public purpose." You will have it shortly. Then we are going to take the...Mr. Jenkins' language...let's see on page...13, line (b) where there seemed to be some question about acquiring property through purchase or otherwise, we've inserted the words "to acquire through purchase, donation and exchange" as Mr. Jenkins would prefer and subject to Article 1, Section 4. Expropriation, and to improve industrial plants, buildings, and industrial plant equipment," things such as this. I think this should satisfy anyone who has any reservations that this section would not be applicable to...under the Bill of Rights. I think it certainly would. I think we found one

other flaw.

Then, we also found something else that we felt needed to be cleaned up. If you will, notice on line 27 of page 13; right behind (c), it says "to lease, sell or otherwise dispose of," which would mean that you could possibly give the property away. We have added the words "to sell, lease, lease-purchase or demolish," which, in some cases, you may need to demolish or tear down a portion of the improvements on the property to make the property more valuable. We have added those words "lease-purchase," which is what is done in New Orleans, I think. It is done in...I know it is done in Lake Charles; they use lease purchase arrangements, and then I tried to think of all kinds of possibilities where a port or an industrial district might be accommodated under the "otherwise dispose of" clause in there and have the words "or demolish." This amendment is being prepared at present and I would urge you...I feel like that this accommodates the people who had amendments. It's broad enough to do the job, yet restrictive enough that we are not going to have...what is going to...what can't...it can't happen in Louisiana what happened in our neighboring State of Mississippi, where every little county, political subdivision, went out with their balanced industry...with agriculture with industry program and sold general obligation bonds and brought in little, you know, small industries, basically in the garment, textile-related field. I just think that...and then there were...of course the company moves...either goes broke or moves out overnight. I think we've got the safe restrictions in that the legislature can impose restrictions and that they may authorize and that local...that political subdivisions and port, harbor, and terminal districts, which they would grant this authority to, would not go running off with the fly-by-night operation. I think we have cleaned up language up sufficiently in our amendment, which is forthcoming, and I'd hope that you would defeat this amendment and consider the amendment which is coming.

Questions

Mr. O'Neill Harvey, I haven't been able to read your whole amendment yet, but what is the basic difference between adopting these amendments and the new section that you are coming back with?

Mr. Cannon Well, I think what I'm saying is that in this language I have included the entire substance of what you are saying, of what Mr. Jenkins' proposal was, as well as allowing expropriation subject to the Bill of Rights. I think we have done this. I've also...we've also cleaned up some language which would require the necessity of the section to deal exclusively, I think you will read under (2): "furnishing plants for raw agricultural products..." we've removed that where that it would be broad and general enough that it would apply to anything which would have economic impact upon the area and thereby the state. These words we have added; we've tracked the language of...

Further Discussion

Mr. Tobias Mr. Chairman, fellow delegates, this amendment has been passed upon by this convention after somewhat heated debate. We passed upon the issue in Section 4 of the Bill of Rights proposal. It is an attempt to, in effect, destroy free enterprise in the state. It is an attempt to reopen all of the issues which we have heretofore closed. I admit that my concepts of what I proposed, my amendment, failed. I consider it a moot point before this convention, but let me say this, the compromise that this convention eventually wound up with is far superior to what this amendment would try to do. This amendment would, in effect, destroy all of those provisions that we enacted in Section 4. It is an attempt, purely and simply, at anarchy.

[PROCEEDINGS CONTINUE IN SECTORS.]

I wish you would read Section (B). It says that in every instance the purposes of this section are a public purpose. In other words, if a district is pulling out and to take one man's property to give to another, that's not a public purpose. It's a matter of fact. We can't say in a constitution, in advance, that in every instance it's a public purpose. Something like that doesn't belong in a constitution. The only reason it can be there is to tell the courts that they can't say that this is not a public purpose. It's a means for favoritism. Let's let the courts decide whether in any given instance it's a public purpose or not. It's not a question of the intent of the legislature. It's the fact that the legislature has passed a law that says that this is a public purpose. It's not a question of the intent of the legislature. It's the fact that the legislature has passed a law that says that this is a public purpose. And there, in the final amendment we compromised.

wouldn't have to be a public and necessary purpose; we'd get by if it were just a public purpose."

But, the way this section is written, they won't even get around that. They don't even want to have to...it to have to be a public purpose. They think it's all right, if it's a private purpose, if we label it in the constitution a public purpose, and will force the courts to interpret it that way whether or not it really is. The English language

stitution should mean something and it shouldn't be to distort facts. It shouldn't be to distort law. It shouldn't be to make something out of a purpose which may not be in fact. In our view, the Property Section certainly the spirit of it was that we weren't going to allow business enterprises to be expropriated and we weren't going to allow industrial plants to be expropriated. Let's continue that line of reasoning by adopting these amendments. There's no reason any industrial district should be able to expropriate industrial plants, machinery or equipment, as in Amendment No. 2, we do away with. So, I urge the adoption of these three amendments. I think they are divisive because they are different issues and I ask a division of the question.

Arendrents

Mr. Poynter. Amendments sent up as follows:

line 10, after the partial word "divisions" add the following: "Deep-Water Port Commissions, or Deep-Water Port, Harbor, and Terminal Districts"

Amendment No. 2, page 13, line 11, after "Section 4," delete the remainder of the line, delete lines 12 through 32, both inclusive, in their entirety, and on page 14 delete line 1 in its entirety, and delete the remainder of the following:

Subject to such restrictions as it may impose, the legislature may authorize any political subdivision, deep-water port commission, or deep-water port, harbor, and terminal district, in order (1) to induce and encourage the location or addition to an industrial enterprise; therein which would have economic impact upon the area and thereby the state or (2) to provide for the establishment and furnishing of such industrial plant or (3) to provide movable to immovable property, or both, for pollution control facilities (4) to issue bonds or subject to the approval of the State bond or any successor thereto, and to use the proceeds derived from the sale thereof to acquire industrial plant, sites, and other facilities for the purposes thereof (5) to purchase, donation, exchange, and subject to Article 10, Section 1, of the Constitution, to lease, equipment, machinery, furnishings, and appurtenances, and (6) to sell, lease, leasehold, exchange, or demolish all or any part of the foregoing"

which would have economic impact upon the area and thereby the system. Into particular language

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was taken from Hebert v. The West Baton Rouge Parish Police Jury. I think it should satisfy the objection of anyone who had questions as to what public purpose was...or that whether or not this was a questionable public purpose. About five lines from the bottom, we have added the words behind (b): "to acquire, through purchase, donation, exchange," and then, specifically, "subject to Article I, Section 4," the power to expropriate. I don't see how this could be any more specific. If they are going to exercise the right of expropriation, then it is subject to the Bill of Rights' provision on Right of Property. Although no one has raised the question before, we did find some language out of the old Constitution which was included in here, that we felt needed to be cleaned up and that is, behind (c) you notice the former language said: "to sell, lease or otherwise dispose of, all or any part of the foregoing," talking about the property. Well, this would allow them to give it away. We're thinking that...it was our thinking that this was possibly unwise to leave it in here and add the words "lease-purchase, or demolish"---to improve this industrial property it may be necessary to demolish at some time. The Port of Lake Charles lease-purchase agreements so far, I think, there will be...the land and the improvements will revert to private ownership rather than remain in public ownership. Of course, I think this...this is more flexible---the declaring of this public purpose, for the economic impact on the area. This deletes the necessity of raw farm or agricultural products, which is rather specific. I think this takes care of Mr. Burns' proposed amendment which would specifically state the inclusion of the timber industry and forest products. You can also think of the shrimp fishing industry and all this, and I don't think we want to see our constitution...our new constitution, our new document, to include all of these specific types of wage earning endeavors. Like I said State officials should consider this as a...rather as futuristic and having the ability to satisfy the needs of political subdivisions and deep-water ports and our state as a whole for years to come, as well as having enough safeguards in it, through the restrictions which the legislature may impose, as well as the control of the State Bond Commission, the sale of bonds. Are there any questions, Mr. Chairman?

Questions

Mr. Tobias Mr. Cannon, are you aware that this amendment again reopens the question that we passed on in Section 4 of the Bill of Rights proposal, because it opens up the question of whether this taking would be necessary and for a public purpose. Go back and read Section 4 of the Bill of Rights proposal.

Mr. Cannon I'm reading right here, Mr. Tobias, where it says "to acquire, through purchase, donation, exchange and subject to Article I, Section 4, Expropriation."

Mr. Tobias Right. As you read Article I, Section 4, it makes two classifications of expropriation: those done by the public for public purposes which are not...you do not have to establish necessity, and those that would be acquired by private. Now, your amendment, as it is presently drafted, would in effect make it a...it would bring it out of the public sector and would make it...you have to establish necessity.

Mr. Cannon Again, that's an attorney's. I'm not an attorney I have consulted with attorneys, particularly those which have to sell bonds, and they say that this language is satisfactory and is not...and I think we have tried, or we have done our best to satisfy this one particular thing which...you're talking about the smallest imaginable fraction of the acquisition of property for industrial site purposes would fall under the expropriation category. As those of you who are attorneys know, there are certain tax advantages to the person whose

property is taken. He has a longer period of time for which to reinvest his income gain from expropriated land. It may be...he may be very well satisfied with the price willing to be paid, but would prefer the expropriation route because of its advantage to him, tax-wise. Any other questions?

Mr. Lennox Mr. Cannon, is it possible that there could be some amendment drafted that would require that there be no reasonable alternative shown before Paragraph or Subparagraph 3 (b) and (c) would be invoked? I think what's concerned some people, that...local government would to out willy-nilly and tear down existing plants simply to recover the land and use the land for other purposes. Now, if there is some way that you could write into that...those two sections or those two subsections, a provision which would require that no reasonable alternatives exist, I think you might eliminate some opposition.

Mr. Cannon I would have no personal objection to it. If you wish to draw the amendment, I'm...like I say, we have shortened the language considerably; and, I don't know, I feel that it satisfies these objections and these fears that some people have. But, again, to spell it out even more, if you wish to add an amendment to this, should this pass, then I think that's a reasonable...

Mr. Lennox In any case, you would have no objection to such an amendment?

Mr. Cannon I personally wouldn't. No.

Further Discussion

Mr. LeBlau Mr. Chairman and fellow delegates, I just want to invite your attention to the portion of the amendment that has to do with expropriation. In the past, I created two port districts in Cameron Parish. The bill authorized expropriation under the state laws. At the time that I passed the bills, I thought it was a good proposition. However, if you stop and consider that when a lot of the land, especially along the Mississippi River here, was surveyed originally, it was surveyed with the aspect in mind of giving each landowner a certain amount of river frontage. At that time, that was certainly important because much of the commerce in those days was carried on through river traffic. Another thing to consider is if a person has a strip of land that, say, that has a hundred foot frontage on a river that might be a quarter of a mile deep, 1,320 feet deep, but if, say, some dock board comes along and wants to expropriate this property, they can expropriate his frontage, which possibly could be the most valuable portion of that property, and leave that landowner with less valuable property to the back for which he would have no use. It would also take away the landowner's privilege of negotiating with some industry for that river frontage. This is a real serious problem to me, especially in our area where we have a lot of waterways, etc., and also port districts. But, I urge that you consider what Mr. Lennox suggested and see if we could work something out that would be satisfactory to everyone.

Questions

Mr. Roy Conway, I...of course, I've been concerned about this whole section, but don't you agree that even though Mr. Cannon's proposal has some bugs in it, it's better than the committee proposal which on line 25...24, simply says "to acquire through purchase or otherwise"? That...I take it, I was interested in what you were saying, and I take it, am I right, that you are for the amendment, perhaps, over the section proposed by the committee but would like to see the amendment dressed up better?

Mr. LeBlau That's correct, Mr. Roy. The only objection I have to it is that portion of it that deals with expropriation.

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of the committee proposal that "or otherwise" certainly means by expropriation. The only thing is, we don't lock in Article 1, Section 4, provision of the Bill of Rights. That's why I'm for Mr. Cannon's amendment, but I'd like to see it dressed up like Mr. Lennox suggested.

[illegible]

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Amendment

Mr. Poynter All right, the first set of amendments is offered by Delegate Avant. The amendment reads as follows:

Page 14, between lines 1 and 2, add the following:

"No property expropriated under the authority of this article shall ever directly or indirectly be transferred to or leased to any foreign power, any alien, or any corporation in which the majority of the stock is controlled by any foreign power, alien corporation, or alien".

Mr. Avant, I've had...abundance of clarity to the Enrolling Room. If it's all right with you, make it read:

On page 14, between lines 1 and 2, and following the language added by the Cannon amendment...

Mr. Avant: That is satisfactory.

Explanation

Mr. Avant: Yes, Mr. Chairman and fellow delegates, I am not sure that I am going to be able to tell you what I'm driving at. Under this section, as it's been adopted so far, property may be expropriated by the people of a State or another country, or by a private entity. All my amendment does is to make sure that that private entity or person is not a foreign power, an alien, or a corporation that is controlled by aliens. In other words, we are going to take away the right of property from a citizen of this country or this State, turn around and sell it to somebody else for private use, I think the least that we can ask is that we sell it to someone else who is a citizen of this State, or a citizen of this country, and its people at heart.

Mr. Lanier Mr. Avant, I don't know too much about ports, but I was wondering, do any of the ports in Louisiana presently lease any property to foreign countries or foreign persons to use port facilities?

Mr. Avant: I understand that some of them may, Mr. Lanier; I don't know. But, I do know this, from what I read in the paper, that there is a tremendous movement on in the last several months, on the part of foreign capital, to invest in our industry in the States and in this country. I don't think I put any strings on land that was acquired by voluntary means. I didn't put any strings on that, but I say if you are going to use the power of government to expropriate private property for the purpose of reselling it, then we should eliminate the possibility that it might be resold to a foreign power, an alien, or an alien corporation. That's

Mr. Lanier. Well, if we wish to prohibit these things from being sold, we really are going to have to address it to property we designated as acquired by voluntary means.

9. *Legal*. It should not legal a bill of differences.
 10. *My*. *Legal*, but it *is* *very* *very* of a *very*
 of difference to me.

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government to take my property away from me against my wishes, and you are going to propose to transfer it in some fashion to either a foreign power, a foreign corporation, or an alien. You just can't ram that down my throat; I don't care how often you try.

Mr. Lanier Well, what I'm getting at, though, if you wish to prohibit the alien from doing these things with the property, shouldn't you have an amendment that would prohibit this type of activity whether the property was expropriated or voluntarily acquired?

Mr. Avant: Yes, sir, no, sir. I saw a very strong distinction there. If you want to sell your property to a port commission or to anybody else, and then they want to turn around and sell it to an alien, that comes under the heading of their business, as far as I'm concerned. But, when you use the power of government to take your property without your permission, and then turn around and sell it to an alien, that's a horse of another color. Maybe I'm nuts.

Mr. Conroy I said your amendment, I just received a copy of it, and one of the questions I was going to clarify was that it does perpetually prohibit the lease of this property to an alien. Is that

Mr. Avant: If it has been expropriated,

Mr. Conroy All right. Now, is there any reason that you feel that the legislature couldn't impose these kind of restrictions? It does have the authority to impose restrictions.

Mr. Avant I suppose that the legislature could, Mr. Conroy. Whether they will, I don't know. Like I said, it just happens to be a matter that I feel very strongly about, as a matter of principle, and I'd like to see it in the constitution.

Mr. De Bileux: Mr. Avant, the question that's been previously asked is along the lines what I'm worried and concerned about. I'm worried about the word "lease" in this amendment you have because as you well know, on the other side of the river at the place that had a lot of cars and autos stored that were received through loyalties I believe they were, or Datsums--there were just acres of them over there. I don't know whether they were stored as a result of a lease to the manufacturer or to somebody in Louisiana, but certainly they were foreign automobiles. Certainly you were storing the type of automobiles from coming in and being stored in a place like that. Don't you think so?

Mr. Avant Well, I see absolutely nothing wrong with this, whether it be in the State of New York or this parish, or New York State, or Washington, or anywhere else, and let him make a deal to permit those people to store those automobiles in the warehouse that he has leased. But, if you are talking about leasing the warehouse to Mitsubishi no, I ain't for that.

59. We allow 40% lower weight for oil and oil products in our oil carrying transportation as compared to other imports because we don't have a place to where they can leave it to ship me some.

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For 2003, it was going to ship 18,000 Hondas coming through the Port of Baton Rouge. More Hondas, says a Mississippi port official, are coming. However, the port is not open to ships as large as 10,000 tons.

5. The following are the 10-digit zip codes for the cities in the U.S. that have the name "New York": 10001, 10002, 10003, 10004, 10005, 10006, 10007, 10009, 10010, 10011, 10012, 10013, 10014, 10017, 10018, 10019, 10020, 10021, 10022, 10023, 10024, 10025, 10026, 10027, 10028, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037, 10038, 10039, 10040, 10041, 10042, 10043, 10044, 10045, 10046, 10047, 10048, 10049, 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060, 10061, 10062, 10063, 10064, 10065, 10066, 10067, 10068, 10069, 10070, 10071, 10072, 10073, 10074, 10075, 10076, 10077, 10078, 10079, 10080, 10081, 10082, 10083, 10084, 10085, 10086, 10087, 10088, 10089, 10090, 10091, 10092, 10093, 10094, 10095, 10096, 10097, 10098, 10099, 10101, 10102, 10103, 10104, 10105, 10106, 10107, 10108, 10109, 10110, 10111, 10112, 10113, 10114, 10115, 10116, 10117, 10118, 10119, 10120, 10121, 10122, 10123, 10124, 10125, 10126, 10127, 10128, 10129, 10130, 10131, 10132, 10133, 10134, 10135, 10136, 10137, 10138, 10139, 10140, 10141, 10142, 10143, 10144, 10145, 10146, 10147, 10148, 10149, 10150, 10151, 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162, 10163, 10164, 10165, 10166, 10167, 10168, 10169, 10170, 10171, 10172, 10173, 10174, 10175, 10176, 10177, 10178, 10179, 10180, 10181, 10182, 10183, 10184, 10185, 10186, 10187, 10188, 10189, 10190, 10191, 10192, 10193, 10194, 10195, 10196, 10197, 10198, 10199, 10201, 10202, 10203, 10204, 10205, 10206, 10207, 10208, 10209, 10210, 10211, 10212, 10213, 10214, 10215, 10216, 10217, 10218, 10219, 10220, 10221, 10222, 10223, 10224, 10225, 10226, 10227, 10228, 10229, 10230, 10231, 10232, 10233, 10234, 10235, 10236, 10237, 10238, 10239, 10240, 10241, 10242, 10243, 10244, 10245, 10246, 10247, 10248, 10249, 10250, 10251, 10252, 10253, 10254, 10255, 10256, 10257, 10258, 10259, 10260, 10261, 10262, 10263, 10264, 10265, 10266, 10267, 10268, 10269, 10270, 10271, 10272, 10273, 10274, 10275, 10276, 10277, 10278, 10279, 10280, 10281, 10282, 10283, 10284, 10285, 10286, 10287, 10288, 10289, 10290, 10291, 10292, 10293, 10294, 10295, 10296, 10297, 10298, 10299, 10301, 10302, 10303, 10304, 10305, 10306, 10307, 10308, 10309, 10310, 10311, 10312, 10313, 10314, 10315, 10316, 10317, 10318, 10319, 10320, 10321, 10322, 10323, 10324, 10325, 10326, 10327, 10328, 10329, 10330, 10331, 10332, 10333, 10334, 10335, 10336, 10337, 10338, 10339, 10340, 10341, 10342, 10343, 10344, 10345, 10346, 10347, 10348, 10349, 10350, 10351, 10352, 10353, 10354, 10355, 10356, 10357, 10358, 10359, 10360, 10361, 10362, 10363, 10364, 10365, 10366, 10367, 10368, 10369, 10370, 10371, 10372, 10373, 10374, 10375, 10376, 10377, 10378, 10379, 10380, 10381, 10382, 10383, 10384, 10385, 10386, 10387, 10388, 10389, 10390, 10391, 10392, 10393, 10394, 10395, 10396, 10397, 10398, 10399, 10401, 10402, 10403, 10404, 10405, 10406, 10407, 10408, 10409, 10410, 10411, 10412, 10413, 10414, 10415, 10416, 10417, 10418, 10419, 10420, 10421, 10422, 10423, 10424, 10425, 10426, 10427, 10428, 10429, 10430, 10431, 10432, 10433, 10434, 10435, 10436, 10437, 10438, 10439, 10440, 10441, 10442, 10443, 10444, 10445, 10446, 10447, 10448, 10449, 10450, 10451, 10452, 10453, 10454, 10455, 10456, 10457, 10458, 10459, 10460, 10461, 10462, 10463, 10464, 10465, 10466, 10467, 10468, 10469, 10470, 10471, 10472, 10473, 10474, 10475, 10476, 10477, 10478, 10479, 10480, 10481, 10482, 10483, 10484, 10485, 10486, 10487, 10488, 10489, 10490, 10491, 10492, 10493, 10494, 10495, 10496, 10497, 10498, 10499, 10501, 10502, 10503, 10504, 10505, 10506, 10507, 10508, 10509, 10510, 10511, 10512, 10513, 10514, 10515, 10516, 10517, 10518, 10519, 10520, 10521, 10522, 10523, 10524, 10525, 10526, 10527, 10528, 10529, 10530, 10531, 10532, 10533, 10534, 10535, 10536, 10537, 10538, 10539, 10540, 10541, 10542, 10543, 10544, 10545, 10546, 10547, 10548, 10549, 10550, 10551, 10552, 10553, 10554, 10555, 10556, 10557, 10558, 10559, 10560, 10561, 10562, 10563, 10564, 10565, 10566, 10567, 10568, 10569, 10570, 10571, 10572, 10573, 10574, 10575, 10576, 10577, 10578, 10579, 10580, 10581, 10582, 10583, 10584, 10585, 10586, 10587, 10588, 10589

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you if you don't think it might prohibit some of the foreign products from coming through. They'd just be passing through our port?

Mr. Avant Mr. De Blieux, if it prohibits a foreign corporation from leasing property that has been expropriated by that port over there, then that's exactly what I want it to do.

Mr. Flory Are you aware, Mr. Avant, in the question that Mr. De Blieux poses to you on the local port, that deal was between the port authority and R.N. Gonzales Company, which is a Louisiana based corporation?

Mr. Avant If you say so, Mr. Flory, I'm sure it's correct. I personally don't know.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I don't want to do anything here which is going to probably defeat our having some jobs for some of our people, just because a foreign government might want to lease a little warehouse or property that had previously been expropriated for the building of warehouses or storing of goods or something like that. We've got three very important ports in this state that deal in, you might say, foreign goods that comes into this state: the Port of New Orleans, the Port of Baton Rouge, and the Port of Lake Charles. I just think that having a provision in here that this property could not be leased to a foreign government is bad. I agree, we shouldn't transfer any of the land. I'm not opposed to that, but to say that it cannot be leased to them, I think, is just stretching it a little bit too far. For that particular reason, I think this is a bad amendment on that particular angle. If they could take out the word "lease," I might be able to go with it, but not with the word "lease" in it. I just think it's bad.

Questions

Mr. Lanier Senator De Blieux, would you agree with me that the way this thing is written, it says, "No property expropriated under the authority of this article shall ever directly or indirectly be transferred to or leased," that you couldn't even sublease to a foreign outfit that needed a warehouse or something like that?

Mr. De Blieux No way, under the provision of this amendment, there's no way you could do that.

Mr. Lanier In your opinion, what effect do you think that would have on future foreign trade with ports domiciled in the State of Louisiana?

Mr. De Blieux I think it would have a very serious effect upon our ports, Mr. Lanier; that's the reason I oppose that word "lease" in here.

Mr. Jenkins Senator De Blieux, the property across the river in West Baton Rouge where the Datsuns used to be, was it expropriated?

Mr. De Blieux I do not know, but I know that it was...in my opinion, there was a lot of foreign goods stored on it. That's the only thing I say. Now, as Mr. Flory said, it was leased by Mr. Gonzales, who is a local resident. Now...but I can understand the situation where it could be leased to somebody that's importing goods like that, and I think that it could be very serious to our port.

Mr. Jenkins But, isn't it true that this amendment doesn't in any way discourage foreign investment or foreign use of property here unless that property has been seized from some American citizens? Isn't that the only instance where it could ever encumber any foreign trade, is if land is first taken from an American and then given to a foreigner?

Mr. De Blieux Mr. Jenkins, don't you well know that a lot of our property that's used for public purposes has been taken from citizens through expropriation? That's what I'm worried about. It would seriously hamper the use of that property.

Mr. O'Neill Senator De Blieux, I'm a little concerned that we're getting off point here. Doesn't this only concern land that has been taken by the government, expropriated by the government? People here think that we're just talking about, you know, any corporation coming in here, period.

Mr. De Blieux Mr. O'Neill, if you will just look at the overall picture of this property, we are talking about not only property which has been taken by expropriation, but property which may be taken by expropriation. I'm thinking that it will seriously hamper the operation of our ports. That's what I'm concerned about and worried about.

Mr. Kean Mr. De Blieux, following up that point, don't you recall that the property where the Greater Baton Rouge Port Commission is now located was expropriated? If you look at the case of Miller v. The Greater Baton Rouge Port Commission, you will find the expropriation suit.

Mr. De Blieux That's correct, Mr. Kean; that's why I'm concerned about this amendment.

Further Discussion

Mr. Casey Mr. Chairman and delegates, this may look like a very innocent amendment that would not do a great amount of damage to anybody operating a port in the State of Louisiana, but I must warn you of this, that I have just spoken to the director of the Port of New Orleans to determine just how much damage this does. I must tell you, first of all, that occasionally they do have to expropriate property. The method of expropriation is used, particularly, where they can't find all the heirs for property. Secondly, they do have under negotiation, at this time, expropriated property for a possible contract with a foreign alien corporation to bring all of their heavy equipment into the State of Louisiana, to assemble that heavy equipment in Louisiana, using Louisiana labor, and here we want to prevent a possibility or a potential of an industry or future income to the State of Louisiana, and prohibit that through an amendment of this type. Now, I could easily understand that you might want to prohibit sale to a foreign or alien power, but why prohibit a lease? That's how the port authorities operate—on a lease basis. I've also spoken to the director of the Port of New Orleans, and he has indicated that at the request of the U.S. State Department, he negotiates many contracts with foreign powers. He is in charge of advisory capacities to advise other ports in foreign countries by which we are able to stimulate our own trade, and sell some of our soybeans to foreign powers, or some other products that are grown or produced in Louisiana. Now, this is absolutely ridiculous. I can't understand why we've become so frightened...but I can't understand why we've become so excited and so emotional over problems of this type. I can readily see that we want to avoid foreign powers or alien corporations coming in and taking advantage of our citizens. But, we're cutting off our nose to spite our face, is all we are doing. All we are doing is preventing and retarding the future possibilities of developing our trade in the State of Louisiana, with our products or importing other products, and utilizing Louisiana labor. Now, if that's what you want to do, and you're really not exactly sure what this amendment does, go ahead and vote for it. But, if you want to be real sure that you're not affecting the future development of the State of Louisiana and its port authorities and its department of industry and commerce, and you well know that the department of industry and commerce has worked hard on developing trade with foreign powers, alien corporations. That's the very thing that our governor and many of

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for. If that's what you want to do, vote for the amendment. But, if you want to be real sure that you're not going to affect us in the State of Louisiana, whatever you do, vote this down until we're absolutely certain that we're not going to affect this potential.

Question

Mr. Jenkins Tom, you know every day when you pick up the newspaper, you read about another country that has expropriated American business interests in those countries. Do you really think there's another country on the face of the globe that, in its own country, would expropriate its own people's property and then turn around and sell it or lease it to American interests who would be down there?

Mr. Casey Woody, I don't...I'm not...I don't know what other powers would do, and I'm not too sure; I can't say I don't care; I certainly care, but the point is, we're dealing with Louisiana property, Louisiana industry, Louisiana potential. Expropriation sometime may be the only way of accomplishing anything.

Mr. Jenkins Mr. Chairman, I thought that the article in the newspaper that you mentioned was that it was simply expropriated under the authority of this article shall ever directly or indirectly be sold or donated to...

Would simply withdraw the word "lease."

Closing

Mr. Avant I suggest that you might get your Constitution of 1921 and read Article XIX, Section 21, therein. I'm not going to read it to you. I also suggest to those who may be concerned about emotion, and who are old enough to remember, to reflect on the years 1941 to 1945, Mr. Casey.

Amendment

Mr. Foynter All right, the Burson amendment.

Amendment No. 1. On page 13, line 1, in Floor Amendment No. 2 proposed by Delegate Casey, and adopted by the Convention on October 2, 1973, below line 20 (and with your permission, Mr. Burson) and below the language added by Convention Floor Amendment No. 1 proposed by Mr. Avant and just adopted, of said amendment, add the following proviso: "The provisions of this section shall not apply to school boards."

Mr. Burson On Saturday, fellow delegates, Mr. Chairman, I had proposed an amendment which would have added in school boards on the section on intergovernmental cooperation. This section was passed upon reflection and the advice of other delegates to the convention, Mr. Sanduz, Mr. Flory, and others, deemed it to be a better approach to continue what we did on Section 16, where we wanted to include school boards on all things involving them. They obviously did not belong. So, the approach

have the power to set up industrial districts or

although political subdivisions will usually include school boards that in this instance, this provision would not apply to school boards. That is the only purpose of the amendment.

Mr. Jenkins I see no objection to the amendment.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, I ask you to please read the Cannon amendment. There's nothing in it whatsoever that pertains to industrial development of school sites. This amendment that Mr. Burson...has absolutely no place in this particular section whatsoever. There's no possibility of any school sites or school boards being involved in this particular amendment. I just think it's unnecessary, and we're just messing up the amendment. I ask you to vote against the Burson amendment.

Questions

Mr. Jenkins Senator De Blieux, if you look at Mr. Cannon's amendment, on line 2, it says "The legislature may authorize any political subdivision," and then it goes on.

Mr. De Blieux That's as close, Mr. Jenkins, that the closest you can possibly get to a school board --- just because it says "any political subdivision." In my opinion, that means a parish or something of that sort that wants to develop an industrial site because this pertains to industrial sites, not school sites or anything else like that, or other property.

Mr. Jenkins When it says any political subdivision has all these powers, does it mean every polity, every city council, every city-parish council, every special district, school board?

Mr. De Blieux It means if these particular entities, political entities, want to develop an industrial site, yes, the legislature may authorize them. But, there's nothing in the world pertaining to school sites in this section. It doesn't pertain to it, and I think it's obsolete...we obsolete language in this section. That's all.

Closing

Mr. Burson I just...fellow delegate to point out what you all already know boards throughout the state own a lot more than school sites. They own six tenths in my parish, they own a great deal of water frontage, and obviously, if exclusion is here, somebody is going somewhere along the line, in the attempt to try to set up an industrial district, we think we want that. School boards are not schools. We've got to do either one or the other. We either include them or exclude them. If they would otherwise apply, the political subdivision would, in many cases, be a school board.

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[Amendment proposed by Mr. O'Neill, Mr. Poynter, and Mr. Zervigon.]

Amendment

Mr. Poynter Mr. O'Neill, indeed, offers them. The instructions have got to be changed to make it work into the Burson amendment...I mean, into the Cannon amendment. It would now read as follows: (this is the O'Neill amendment)

In Convention Floor Amendment proposed by Mr. Cannon and adopted by the Convention on today, on line 1 of the language added thereby, immediately after the words "Subject to" and before the word "may" delete the words "such restrictions as it" and insert in lieu thereof the following: "Article I, Section 4, and such restrictions as the legislature".

Explanation

Mr. O'Neill Ladies and gentlemen of the convention, I wish you would listen to this very closely because there's a very subtle difference in what is being done in this committee proposal. Let me first read to you. If you have the copy of Mr. Cannon's amendment as adopted by the Convention, it would read: "Subject to Article I, Section 4, and such restrictions as the legislature may impose," and it goes on. Now, let me tell you why we are trying to make it applicable to Article I, Section 4, at this point. Read down to the (b). It says, "to acquire, through purchase, donation, exchange, and subject to Article I, Section 4, expropriation, to improve industrial plant buildings and industrial plant equipment." Now, look back up at (a), and read (a): "to issue bonds, subject to the approval of the State Bond Commission, or any successor thereto, and to use the funds derived from the sale thereof to acquire and to improve industrial plant sites." Only Section (b) is subject to Article I, Section 4, the way this is drawn. It's plant improvements and plant buildings. Under the Cannon amendment, as adopted, it does not apply to industrial plant sites. There is a very subtle difference—very subtle. I think you must be very careful and read it in. We simply want to make the entire proposal subject to Article I, Section 4, which is the right to property. I think this is more in line of a technical amendment, and I really hope that there won't be too many objections to it.

Questions

Mrs. Zervigon Mr. O'Neill, what you are doing disturbs me greatly. Are you trying to imply that none of the things that we are writing at this moment, nor have written in the past about legislative, executive, and judiciary, are subject to the Bill of Rights unless we specifically say so?

Mr. O'Neill Mrs. Zervigon, your committee proposal had many things that would not have been subject to the Bill of Rights had we not straightened it up. I'm simply trying to make absolutely sure that Section (b), as it applies, will do the same thing and have Section (a) apply in the same way. The language which qualifies Section (b) should be the same way in Section (a). My amendment simply does that.

Mrs. Zervigon Is the executive branch of the government of Louisiana subject to the Bill of Rights?

Mr. O'Neill I would expect so, Mrs. Zervigon.

Mrs. Zervigon We didn't say so.

Mr. O'Neill Well, Mrs. Zervigon, your committee proposal said that the none rule charters as provided in Article I. If that situation would be the same as they were, then it doesn't apply. I think that's what you're saying.

Mrs. Zervigon Mr. O'Neill, are we talking about Section 1, 2, and 9 at the present moment?

Mr. O'Neill No, we are, we're talking about this section, and I think you should have no objection to this proposal.

Mrs. Zervigon Mr. O'Neill, isn't it the fact that if you don't say that some portion of the constitution, which we are now writing or have written, is not subject to the Bill of Rights, then it is subject to the Bill of Rights because the powers reserved to the people are paramount?

Mr. O'Neill Mrs. Zervigon, simply read Section (b). It says that Section (b) is as to Article I, Section 4. Section (a) doesn't say a word about it.

Mr. Tobias Mr. O'Neill, are you aware that your amendment, in effect—the subtle distinction that you claim to have arrived at—in effect, you are arguing against your own philosophy?

Mr. O'Neill Mr. Tobias, you wouldn't know what my philosophy is, sir.

Mr. Arnette Well, Gary, the question I have is that since Section (B) is specifically subject to Article I, Section 4, do you think the courts might interpret that since Section (B) is specifically made subject to it, that Section (A) would be assumed not to be subject to it?

Mr. O'Neill That's exactly why I'm offering my amendment, Mr. Arnette: that's the way I think most people in here would interpret it. I think you grasp the point very well.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, I think we are amending and reamending and attempting to reamend this section to the point of almost trying to kill it. The provision making this article subject to Article I, Section 4, is in the proper place where you talk about the acquisition of property. I submit to you, that it is not germane to the remainder of this section. I ask that we move along and let's reject this amendment, so we can try to get something accomplished.

[Amendment proposed by Mr. O'Neill.]

Closing

Mr. O'Neill I very strongly disagree with the distinguished Committee Chairman. I think if you will simply read Section (A) and then read Section (B), that you will see that there is a difference. In Section (A) provides "to acquire and to improve industrial plant sites," to me that means lands, to me that means property. Under Section (B) which is subject to Article I, Section 4, it says "To improve industrial plant buildings and industrial plant equipment." I think that anybody would know the difference between land and equipment. I think the intent of the committee was very subtle. I think this amendment will help straighten it up and will help make it subject to the Bill of Rights. In effect, what has been done, they said "Yes, buildings and equipment will be subject to the Bill of Rights on the right to property," but, industrial property will not be. I think it is up to us to clear up this Bill of Rights and not be accused by our people that we are not governing.

[Amendment proposed by Mr. O'Neill, Mr. Poynter, and Mr. Zervigon.]

[Amendment proposed by Mr. O'Neill.]

Mr. Zervigon Mr. Chairman, delegates, I wish you would take some more look at this section before you vote on whether or not to improve it...approve it.

... says any political subdivision under Section (A) can acquire industrial plant sites. "Acquire" means by donation, exchange or expropriation; look under the definition of "acquisition of property." How many political subdivisions are there in this state? There are police juries, city-parish councils, city councils, water districts, sewerage districts, lighting districts, fire protection districts and on and on and on. Under this section the legislature can authorize any district to under Section (A) "acquire industrial plant sites by expropriation," and under (B) "by expropriation can acquire industrial plant buildings, equipment, machinery." Does this belong in our state constitutions by virtue of what? Is it constitutional indignity? Is it even statutory indignity? No one has challenged the philosophy of this whole section. You know what it is, plain [plain] and simple-fascism; that's exactly what it is, fascism. It's welfare for big business and there aren't too many people here who are in the right to do business and engage in enterprise than I do. But, this is a means for giving special favors, special privileges to favored few at the expense of the people of this state. There is no reason to be expropriating the property of one citizen to sell or donate or exchange or anything else to any other citizen of this state. If you will leave business along it can make it. It doesn't have to have devices like this, certainly not in our state constitution. There is no reason for it, no rationale for it. I urge the defeat of this section.

Questions

Mr. Nunez Mr. Jenkins, you indicated that any political subdivision-meaning that or indicating that-that just once we adopted this any political subdivision can do these things.

Mr. Jenkins No, I didn't say that. I said that the Legislature could authorize any...

Mr. Nunez You left the legislature out specifically. You said "any political subdivision." Doesn't it say "subject to the will of the legislature" or "such restrictions that may be imposed by the legislature"?

Mr. Jenkins That's right; it doesn't say "subject to this constitution." When we said in (B) that it's subject to Article I, Section 4, that implies that the rest of it is not subject to that same article and section.

Further Discussion

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, I think we have discussed this matter long enough. I only want to point out to you that this is an authorization to the legislature to do these things. It's necessary to have this authorization because this is not a normal governmental function. Therefore, Mr. Chairman, if there are no more amendments I move the previous question on the entire section.

to create commissions and districts to implement same; (3) to review decisions of any such commissions; (4) and to adopt standards for use, construction, demolition and modification of areas and historic preservation districts is retained."

Explanation

Mr. Derbes Ladies and gentlemen, I would respectfully request your attention for a moment while I explain this amendment and hopefully satisfy any questions that you may have regarding it. It is the intention of this amendment to consolidate and to clarify what I regard as the rather repetitious and unnecessarily redundant verbiage found in the present Section 19 and 20 of the present committee proposal. I have... I take great pride in saying that in addition to the coauthors who are mentioned on the amendment which is on your desk, the following individuals have given me their permission to identify them as coauthors: Tony Vesich, Senator Jim Brown, Representative Johnny Jackson and Joe Giarrusso. The purpose of this amendment is to announce the clear public policy with regard to the ability of local governmental subdivisions to control land use, zoning and historic preservation. I think it gives us all an opportunity, looking through our local governmental subdivisions, and, of course, subject to any changes which they may from time to time make, to develop areas which will redound to the benefit of all citizens, and to preserve the cultural heritage of this great State of Louisiana. There is nothing in this amendment, nor in the existing committee proposal--I might add--which does any violence whatsoever to the Bill of Rights as we have already adopted it. All provisions of this section, if this amendment carries, would be subject to any provisions that have been discussed in Article IV of the Bill of Rights. What this amendment does further, is it confirms the ability, or at least the historic and legal right, for regulation of the architectural heritage and integrity of the Vieux Carre, which has been subject to constitutional restriction and limitation--I might add--with the overwhelming consent and encouragement of those residents and businessmen who've lived and worked there since 1936. This preserves all of what we have done for historic preservation in the past, all of what we have done for land use and zoning regulations in the past and announces as a clear public policy that such provisions will be continued in the future. All we are saying in this amendment is that local governmental subdivisions may create regulations with respect to these public purposes. I think what we have to agree here is that we are all in this thing together, and that the policies of zoning and land use regulations and historic preservation merely permit local government... merely confirm in local government their authority to adopt reasonable regulations which would tend to benefit all of the people of that area and would not permit any one particular individual to make use of the private property which, to the severe detriment of others. I think we can all agree that that is possible. The regulations that we have lived under in the French Quarter for thirty-six years and, of course, I haven't lived under them for thirty-six years, because I'm not that old, have preserved the integrity of that area and have, in fact, retained that area as you know it today. I can say with great conviction that were it not for those regulations, were it not for the ability of the historic district in that area, to promote the welfare of that area to a reasonable architectural and historic regulation, that area as it exists today would not... would simply not exist.

Questions

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Mr. Abraham Jim, please explain the intent and the purpose of the words "which authority is declared to be a public purpose."

Mr. Derbes Mr. Abraham, until a decision of the Supreme Court in 1954, zoning was not necessarily considered a public purpose. All we are doing is saying that when local governmental authorities act in these three areas: in the area of land use, the area of zoning and the area of historic preservation, they are acting in the public interest, they are acting to promote the general safety, health and welfare of all the people. That's all we are doing. We are not necessarily creating any superior authority which would not be subject to the Bill of Rights, nor are we subordinating to local government this authority, nor are we subordinating this authority of local government.

Mr. Roemer Jim, I, too, am impressed with the section; I think I can support it. I just have a friendly question about that last sentence--question of information--"Existing constitutional authority for historic preservation districts is retained." Will you hit that a lick?

Mr. Derbes There is only one historic preservation district in this state, Mr. Roemer; it exists in my district and it is the district known to all of you, I hope, as the French Quarter or the Vieux Carre. All we are doing is confirming the authority of the Vieux Carre to continue in this vein; to continue that regulation, which they have had for the last thirty-six years.

Mr. Roemer In other words, this language "Existing constitutional authority" refers to the old constitution, not the one we are writing now?

Mr. Derbes That's correct.

Mr. Lanier My concern is the same as Mr. Roemer's about this last sentence. Does this mean that the existing constitutional authority would go to newly created districts under the new constitution?

Mr. Derbes No, sir, it does not mean that at all.

Mr. Lanier The only purpose of this is to ratify the existing one district in the state?

Mr. Derbes Absolutely; it has all the authority for new districts that would be created would be subject to the first sentence of the amendment, completely subject to the first sentence of the amendment. I might add and direct your attention to Subsentence...Subparagraph 3, which reserves to local governmental subdivisions the right of review. So that any regulations, any districts, any historic preservation or land use or zoning regulations created pursuant to this authority would be always and permanently subject to review by that local governing authority. So, no such regulations could be created which could not, thereafter, be amended for the benefit of all people.

Mr. Lanier One further question. To your knowledge would there be any difference between the present powers and authority of the existing district and these that are set forth in this section?

Mr. Derbes No, except it would preserve the right of review.

Mr. O'Neill Mr. Derbes, I have two questions. Is this power for local governments to zone and to provide for land use and zoning in the present constitution?

Mr. Derbes I don't believe it is, Mr. O'Neill. I think it should be and that's why I saw fit to incorporate it in this particular amendment. It's also provided for in the committee proposal, I might add.

Mr. O'Neill Would you distinguish in your mind or

in the mind of the committee the difference between land use regulations and zoning? I've asked several people that question, and I haven't gotten very good answers.

Mr. Derbes They are really essentially the same thing. "Land use" as I understand it, is essentially a new term of art which is a further expatiation on the old term "zoning."

Mr. DeBlieux Mr. Derbes, I'm always so concerned about that last sentence. What provisions exist in the present constitution right now?

Mr. Derbes All that exists...the present constitutional provisions, Senator DeBlieux, provide that there is a Vieux Carre Commission which is appointed by the mayor of the city of New Orleans, which has the authority to regulate the architecture and character of historic buildings and sites--the exteriors of historic buildings and sites in the French Quarter of New Orleans.

Mr. DeBlieux Now, don't you realize...

Mr. Henry The gentleman has exceeded his time, Senator. I'm sorry.

Further Discussion

Mr. Chehardy Mr. Chairman, fellow delegates, in all seriousness, I cannot understand anyone hesitating to help preserve the French Quarters, whether or not they are the Vieux Carre, really, whether or not it would be located in New Orleans, in Tangipahoa Parish, or in Shreveport. This is definitely an asset to the whole State of Louisiana; it is definitely something that is drawing visitors yearly, bringing millions of dollars into our state and next to the Port of New Orleans, is probably the main attraction and the main source of income that we have in the whole metropolitan area. So, I just wanted to go on record as wholeheartedly favoring this amendment. I believe we should take a little more interest in the historic values of our state. There is many an area I pass and see an old plantation going into decay or something that should be preserved. Last Sunday, we happened to be out in Lake Borne, and I saw this old...what is today referred to as a castle, Martello's castle, sort of going down into decay. At that moment, I turned to the group that was with me and asked them, "Why isn't something done to really preserve something this historic?" I think we have a chance here to do something that is right and do it fast. If there are no other speakers, I would like to call for the question, Mr. Speaker.

Question

Mr. Chehardy Try not to be prejudiced now, Mr. Conroy.

Mr. Conroy Mr. Chehardy, did you know that I fully agree with everything you said about this...

Mr. Chehardy I was sure of that, Mr. Conroy.

Further Discussion

Mr. Arnette Ladies and gentlemen of the convention, I would like to point out one thing in this particular amendment that disturbs me; it is that part of the sentence which says "which authority is declared to be a public purpose." The reason it greatly disturbs me is because we are automatically declaring that any time a police jury or a city council or any other subdivision says, "This is a historic district," we have precluded the courts from saying that it is a public purpose or a public district, or something of this sort. We are precluding the courts from ever passing on this issue. This is very, very important because it brings up several issues--the main one being if any police jury would decide that this is a historic district, it is a historic district and nobody ever has a

chance to pass on that besides that police jury.

Louisiana was drilled right outside my home town, Jennings. If the police jury were to decide that this is a historic district, because the first oil well was drilled here and only old-time oil rigs would be used in that part, a historic district, then I would have a chance to say anything about it. The courts could never pass on that, and you would have to drill every new oil well with old equipment. I know this is a ridiculous example, but it's one of many that could be brought up. Now, I am not now going against the historic preservation regulation, nothing against historic preservation districts. But, if you are going to have these say "If it be for a public purpose." Don't say "It is historic for a public purpose." I don't know there is any doubt in anyone's mind that the New Orleans French Quarter, whatever you want to call it, its preservation is for a public purpose; it's very obvious; it's a tourist attract; it brings in tourist money; it brings in money for the State of Louisiana and for New Orleans. I don't doubt that if you have a little town or every parish in Louisiana automatically start talking about historic preservation districts and having no court ever pass on it, whether it be for a public purpose or not. This amendment does just that. I hope you realize exactly what the bill is and how grave it is. Yes, I will yield to a question.

11 I'm worried...Greg, I mean, I'm
12 "public purpose" means anything?
13 ty be public purpose? The results
14 would declare to be...you know for the
15 be...they could say would never be
16 I'm just wondering what the heck
17 event. I am concerned it if means

Mr. Arnette Well, the _____ a little fuzzy, because I don't think it is particularly clear. But to me, it presents a problem that if the _____ jury said that this particular area of the p _____ would only be for sugar cane farming and some _____ was a rice farmer there, then it's automatic _____ that way, without anybody ever having a say a _____ it--whether it be for a public purpose or not. _____ cause it's automatically assumed by this stat _____ in the constitution that it is for public p _____

Mr. O'Neill. Ladies and gentlemen of the convention, last week we objected to the Committee Proposal, Section 19, as it was stated. I think it gave historic preservation districts far more latitude than was intended. I do not object to the attempt to save the historical preservation districts from this amendment, as it is, I do object, though, to raise several questions—questions that have not been sufficiently answered in my mind, and I think questions that you should have answered. There is a distinction made here between the terms "land use" and the word "zoning." In my mind, and I think Mr. Derbe, said this too, the words seem to be of the same nature, and I think there is a very grave distinction between these two, when we think about what is going on in the Federal Congress right now and what our United States Senators and United States Congressmen have been objecting to, and that is comprehensive land use regulation by the Federal government. Now many of you think back to your... your area of the state where, under this, the Federal government has declared that the Federal Government has the right to require that the land be used in the way that the Federal government requires it to be used. This I think is a very grave question.

the local level. If it's synonymous with zoning, I think we should say zoning. If it's not synonymous with zoning, I think we should make the distinction. I think that everyone of you here, particularly the people who are in local government, in ZIP parishes, should help define this term "land use," and make sure that we are not getting into what the federal government has done--which would be zoning on a far more comprehensive scale than anything has ever been done before. I think the people who are in local government should help define what this "land use," because it would take such large areas of land and would say what could be built, what could not be built, how it is to be built, and when it could be built. I would like to ask the members of the committee to explain the distinction between their mind and the mind of zoning with zoning, zoning and not zoning, zoning.

Lennox. Mr. Chairman, I would like to be as brief as I possibly can on this subject matter. First, I applaud Jim Derbes and his co-authors for their efforts to constitutionalize the preservation of the Vieux Carre and, for that matter, the Vieux Carre Commission. I agree with them on almost everything they say on that particular subject. However, I would like to bring to your attention for a moment what effect this particular amendment and/or Sections 19 and 20 might have on the industrial development of the other sixty-three parishes of our state if 19 and 20 are adopted, or if you approve this amendment. We are now consuming in this state a great deal of basic raw materials--steel, feed grain, food stuff, fuels of all types, just to mention a few. The current situation in this country today has rendered the law of supply and demand unworkable. If you don't believe so, ask any housewife who goes to the shopping center each weekend. We should be encouraging more abundant production of essential goods to meet the needs of the people and to stabilize our economy. The present law is a hindrance to that. It doesn't seem to me to be working against the needs of the people. I do not fault the objectives of reasonable people interested in preservation. But I see Sections 19 and 20 and this amendment as one more gigantic roadblock in the path of industrial and agricultural development in Louisiana. This amendment and Sections 19 and 20, if adopted, would bring industrial expansion to a virtual stop, impede or end any long-range highway construction program and stop many necessary public works projects. I could cite you several ridiculous experiences I have had with these results who get involved in historic preservation. I don't want to burden you with that at this moment. Again, I want to say to you, I do not oppose preservation of legitimate places of historic interest. I want to see them preserved and protected and go into all sixty-four parishes of this state.

state. Now let me submit to you, I want to see you
very few of you who have ever seen

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Mrs. Zervigon Mr. Lennox, when we are encouraging industry, don't you think it's a good idea for the benefit of our citizens, to set aside some residential areas, as well, in which industry may not come--to set aside industrial areas as well as residential areas?

Mr. Lennox Well, Mary, I can't fault you on reasonable zoning if that's the question you've asked me. I don't fault that situation at all.

Mrs. Zervigon Don't all of these decisions have to be reviewed by the governing authority in the Derbes amendment?

Mr. Lennox Not necessarily. The governing authority reviews the creation of the commission; thereafter, the commission may declare any section of St. James Parish where there's an oak tree that's two hundred years old as an historic preservation district; well, you say that, but I have fears about that and I....

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, as Chairman of the Subcommittee on Affairs of the city of New Orleans, the problem of trying to provide constitutional language to preserve existing constitutional status of the French Quarter was so drafted as presented by our committee. I would like to suggest to you that the Derbes amendment provides, in my estimation, provides better language in attempting to condense the lengthy wordage that we have and attempt to clarify it. The amendment says contrary to what Mr. Lennox says, that the governing authority does have the right to review the decisions of the commission, rather than just having the sole right to review the creation of the commission. If you look at line 3, they say "to review the decisions of any such committee." We think that by vesting this power as existing in New Orleans, it does provide us with the protection. Most of the delegates from New Orleans know that on several occasions I have gotten up back home and raised some concerns about how we attempt to use zoning and historic preservation to offset the growth or stymie the growth of particular minority communities. In fact, I have used the phrases that there are two kinds of preservations going on in New Orleans--historic preservations and preservations of the slum. However, I do not believe as the Derbes amendment is being presented that it offers the possibility of communities and property being expropriated on the whim of the local governing authority. It does provide, in my estimation, the protection--and at the same time, I recognize that we have adopted Section 4 of the Bill of Rights, and I do not see this in conflict with that. It does provide property owners who have certain vested and inherent interest in their property to be protected under Section 4 of the Bill of Rights. So, Mr. Chairman, if there are no more speakers, I move the previous question on the amendment.

[Amendment No. 1, proposed by Delegate Derbes, adopted by the convention, immediately following the word and punctuation "structure," insert the following: "Private property, however, may not be expropriated for such public purpose as herein declared." tabled.]

Amendment

Mr. Poynter Alright. This is the Pugh amendment. I've got to change the instructions. It should read: On page 11, in Convention Floor Amendment No. 1, proposed by Delegate Derbes, and adopted by the convention on the day. On line 9 of the language added by said amendment, immediately following the word and punctuation "structure," insert the following: "Private property, however, may not be expropriated for such public purpose as herein declared."

Explanation

Mr. Lennox Mr. Chairman, fellow delegates, Mr. Pugh, being unavoidably detained from the convention, has asked that this particular amendment be brought to the attention of the convention. It simply adds to the Derbes amendment, just passed, which consolidated Sections 19 and 20. The sentence "private property, however, may not be expropriated for such public purposes as herein declared," and I hardly see as though I can explain that any better.

Questions

Mr. Tobias Mr. Lennox, do you not believe that when I say, in Mr. Derbes' amendment, "and use" that your amendment would in effect prohibit expropriation for the purpose of constructing streets.

Mr. Lennox Mr. Pugh's amendment may well do that. I have no amendment before you, Mr. Tobias.

Mr. Conroy Mr. Lennox, are you aware that Article XIV, Section 23 of the constitution presently says that "the preservation of buildings in the Vieux Carre section of New Orleans having architectural and historical value is hereby declared to be a public purpose, and the city of New Orleans hereby authorized to acquire by purchase, or expropriation or otherwise. Such buildings and other structures in that section of the city as the Vieux Carre Commission may recommend to the commission council."

Mr. Lennox I wasn't aware that that language existed in the present constitution, but if you say it's so, I'll certainly accept your...

Mr. Conroy Well, is your amendment intended to...

Mr. Lennox Again, I tell you if Mr. Pugh's amendment is adopted, then I would assume it would reverse that particular provision.

Further Discussion

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, I'm sorry Mr. Pugh is not here to explain his amendment, but I fail to see where it has any bearing whatsoever with respect to zoning, with respect to land use regulations, and really not in connection with the preservation of structures. So, I therefore urge you to reject the amendment, and if there are no other speakers, I move the previous question.

[Amendment No. 2, proposed by Delegate Perez, adopted by the convention, immediately following the word and punctuation "structure," insert the following: "Private property, however, may not be expropriated for such public purpose as herein declared." tabled.]

Amendments

Mr. Poynter The next set is sent up by Delegate Jenkins.

Amendment No. 1. On page 11, line 11, in Floor Amendment No. 1 proposed by Delegate Derbes, et al, and adopted by the convention on today, on line 1, immediately after the number and punctuation "19," and before the word "governmental" delete the word "local" and insert in lieu thereof the following: "Subject to and except as may be inconsistent with this constitution, general law or the local charter, local."

Amendment No. 2. On page 11, line 11, in Floor Amendment No. 1 proposed by Delegate Derbes, et al. On line 3 of the amendment, immediately after the word "adopt" and before the word "regulations" insert the word "reasonable".

Amendment No. 3. On page 11, in the Derbes amendment, on line 4 of the amendment, immediately after the word and punctuation "preservation," delete the words "which authority" and on line 5, immediately before the numeral "(2)" delete the words and punctuation "is declared to be a public purpose;" and insert in lieu thereof the following: "for any public purpose within the scope of their authority;"

Amendment No. 4. On page 11, etc. in the Derbes

amendment, at the end of the amendment add the following language: "In a taking of property, just compensation shall be paid in accord with other provisions of this constitution."

Explanation

Mr. Chairman, delegates, Mr. Derbes' amendment, I think, is an improvement over the committee proposal, but it does need some amendment, and some modification in some ways. So I am proposing four separate amendments, each of one deals with a different aspect, and each of which stands on its own. The first amendment says that "this session shall be subject to this constitution, to general law, and to a local charter." You see, up until the present time, many localities, many parishes—their police juries [juries] have not had zoning authority. Zoning is something new in many areas of our state, and in some such areas zoning may not be desired by the people, but by the terms of Mr. Derbes' amendment, all local governmental subdivisions, both parishes and municipalities, will have to land use zoning and historic preservation authority. The purpose of the first amendment is to say that local charters can limit or restrict that authority or deny it completely if the people in those localities so choose in their local charters. Also, that this authority can be limited by general law, and that this provision should not conflict with other provisions of this Constitution. The second amendment is really a technical amendment. It would insert the word "reasonable" on line three of Mr. Derbes' amendment. It would read then as follows: "To adopt reasonable regulations for land use, zoning, and historic preservation." In fact, in his description of what this section would do, he inserted the word "reasonable" in there. I think everyone wants these regulations to be reasonable. At present, aggrieved parties can go to court and challenge zoning matters when they are not reasonable, and so it's reasonable then that we include the word "reasonable" in this place. The third amendment would delete the language in the Derbes amendment which says "which authority is declared to be a public purpose." That clause really doesn't make sense. An authority is not a purpose. The fact that local governmental subdivisions have an authority says nothing about the public nature of the purpose for which they exercise that authority. Clearly, some cases of zoning or land use may be in the public interest, may have a public benefit, may have some attribute of public policy involved, others would not. So the third amendment simply says that. It says that they do have land use, zoning, and historic preservation authority for any public purpose within the scope of the authority of that local governmental subdivision. The fourth amendment conforms with case law also. It would include at the end of the Derbes amendment, the provision that when any regulation or ordinance results in a taking of property, just compensation shall be paid in accord with other provisions of this constitution. Here's an example of what that means. Suppose an airport zone were created near a city airport, and in that zone it was said that there could be no construction whatsoever. No subdivision that was planned in that area could be built, no business, no industrial plant could be constructed. In such case, that zoning ordinance would amount to a taking of property, and the courts have so held in the past. In fact, we had a similar case right here in Baton Rouge when just compensation was granted to an owner when a zoning ordinance, in effect, told him that he could do nothing with his property. The purpose of zoning and land use regulations are to regulate, not to destroy a property right. It's not to take away the right of a property owner to use his property in a reasonable manner. The purpose of zoning and land use regulations is to regulate, not to destroy a property right. It's not to take away the right of a property owner to use his property in a reasonable manner. The purpose of zoning and land use regulations is to regulate, not to destroy a property right. It's not to take away the right of a property owner to use his property in a reasonable manner.

reversed in the future, so that if there were a taking, just compensation would be paid. So let me review again, these are four amendments that are separate independent amendments attempting to refine the Derbes proposal. The first one makes the zoning authority subject to this constitution, to the general law of the state, and to any restrictions which the local charter might impose. The second one provides that any zoning or land use regulation has to be reasonable. The third changes the language of the Derbes amendment and changes the nature where it says "which authority is declared to be a public purpose", and rather grants zoning authority when there is a public purpose within the scope of the authority of the governmental subdivision. Finally, the fourth amendment provides that if there is a taking of property under one of these ordinances, just compensation would be paid, so I urge the adoption of these amendments.

Questions

Mr. Lanier. Mr. Jenkins, I'm concerned about this language "subject to general law, and to a local charter" consistent with this constitution. Am I correct, but hasn't this language been tacked on to about three or four other provisions in the Local Governments Article?

Mr. Jenkins. Yes, it has, Mr. Lanier. Whenever there is a provision that says "subject to general law, and to a local charter" it is intended to provide that this section on land use, zoning, and historic preservation would not be held superior to other provisions of the constitution, but would be read in conjunction with and in connection with other provisions.

Mr. Lanier. Well, doesn't this also mean that we're going to have to be watching every other provision that comes up from now until the end of the convention to make sure that there is not something that takes away that which was given in those provisions?

Mr. Jenkins. I think we do have to be careful. There is an apparent conflict between two parts of a constitution, the more specific provision will govern. Also notice that this first amendment also allows the legislature to provide uniform standards statewide, and also allows, contrary to the Derbes amendment, for local charters to limit the authority of local governments to regulate property in this way, so I urge the adoption of the amendment.

Further Discussion

Mr. Derbes. Ladies and gentlemen, I thank you for your favorable consideration of my original amendment, and I would urge you to carefully consider the amendments presented by Mr. Jenkins, and to summarily reject them. In my opinion, the provisions of the section that you have just adopted by the vote of the convention are sufficient to grant the police power of the State of Louisiana, and we have clearly enunciated that principle when we said that the "police powers shall not be abridged." The provisions are also subject to any existing provisions of the Bill of Rights, and to the extent that the exercise of the powers granted to local governmental subdivisions may, indeed, be a taking. Local governmental subdivisions would be, of course, subject to the provisions granted in the Bill of Rights. I think there would be no question in your Section is enunciating a clear policy that local governments may regulate land use, zoning, and historic preservation, and may provide for the general public safety, and welfare in this area. To adopt the Jenkins amendment would be to adopt the clear policy that local governments may regulate land use, zoning, and historic preservation, and may provide for the general public safety, and welfare in this area. To adopt the Jenkins amendment would be to adopt the clear policy that local governments may regulate land use, zoning, and historic preservation, and may provide for the general public safety, and welfare in this area.

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escape valves whereby the authority of local governmental subdivisions could continue to be questioned. So I urge you to carefully rule over these amendments. The powers that government have provided, the rights that we have provided for individuals in the Bill of Rights, the rights that we have provided for the state legislature to supercede local governmental subdivisions, seemed to me to be preserved in tact. None of these amendments do anything but further obfuscate and confuse the issue, and detract from the authority of local government subdivisions, as we have so clearly enunciated that authority by adopting the amendment that you just favorably considered.

Further Discussion

Mr. Perez Mr. Chairman, and ladies and gentlemen of the convention, I have to rise, unfortunately to object to these amendments. If you will read, particularly the way Amendment No. 3 reads, it would add to the following words "to adopt regulations for land use, zoning, and historic preservation, for any public purpose within the scope of their authority." Well, the very purpose of this particular section is to give the authority for land use, zoning, and historic preservation. So what you would be doing if you adopted Amendment No. 3, would be giving the authority in one hand and taking it away with the other because this is the very authority by which you are allowing these local governmental subdivisions to go into zoning; so I submit to you the words "for any public purpose within the scope of their authority" would, in fact, take away that authority if it's not already in that charter. I'd like also to call your attention to the fact that when we adopted these provisions which give to local government all authority not prohibited by state law, it's in the title for the management of governmental functions and unless you put and give to local government the right for zoning, it is not one of those authorities included in the general powers granted to local government otherwise. I'd also like to call your attention to Amendment No. 4 which says "when any regulation or ordinance results in a taking of property, just compensation shall be paid." Well, again when you go into the question of zoning, and you tell a person if he owns a lot in the middle of a subdivision and he cannot put up a barroom in the middle of a subdivision, it could be considered to be a partial taking of his property from a stand point that he might have been able to get ten thousand dollars for that lot if he were to sell it for barroom purposes, but if he had to use it for residential purposes then he might only be able to get five thousand dollars for the sale of the lot. So I say to you that the wording in Amendment No. 4 is very, very dangerous and might, in fact, actually kill all zoning because whenever you regulate the use of a piece of property and tell a man that he can't put up a barroom in the middle of a residential area, there is to a certain extent a taking of the property that is a limitation on the use of that property, so therefore, I urge you to reject the amendments.

Questions

Mr. Roy Mr. Perez, if the legislature in its wisdom saw fit to preclude local subdivisions from engaging in certain types of regulatory conduct, under your argument there is nothing to stop it because Mr. Derbes' amendment allows the local subdivision constitutional powers that can never be modified by the legislature, is that right?

Mr. Perez I don't understand it that way, and I didn't quite understand your question.

Mr. Roy Well, Mr. Derbes amendment—doesn't it give, by way of the constitution, to local governmental subdivisions certain authority and powers which may never be modified, even by its own charter, as well as the legislature passing a general law prohibiting the local subdivision from engaging

in that conduct?

Mr. Perez Well, anytime you have the authority to do something, you have the authority to amend or modify it, so I don't understand by its own charter why it could not amend anything that it did.

Mr. Roy My point is, aren't we stopping the legislature by Mr. Derbes' amendment, without some other statement that all this will be subject to general state law? Aren't we precluding the legislature from ever telling local governmental subdivisions how they may regulate land use?

Mr. Perez I did not object to the general law provision if...my remarks were directed against amendments number three and four.

Mr. Roy Oh, O.K. Well, you do admit...

Mr. Henry You've exceeded your time.

[Previous question referred. Division of the question considered. Record vote ordered. Amendment No. 1 reread and rejected: 19-66. Motion to reconsider tabled. Amendment No. 2 reread and rejected: 41-62. Motion to reconsider tabled. Amendment No. 3 reread and rejected: 45-70. Motion to reconsider tabled. Amendment No. 4 reread and rejected: 44-62. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendments sent up by Delegate Arnette as follows, and there has been in the text of the amendment, a change. On page 11, in Amendment No. 1 proposed by Delegate Derbes and others and adopted by the convention on today, on line 3, after the word and punctuation "preservation," delete the remainder of the line and on line 4 at the beginning of the line delete the word and punctuation "is declared to be a public purpose;" and insert in lieu thereof the following: "if for a public purpose," and here's the change, put a comma ", and subject to due process of law;"

Explanation

Mr. Arnette Ladies and gentlemen of the convention, this just clears up the language that was in the proposed amendment. The main thing that it does change, and solves my problem, however, it makes sure that this zoning, this regulation of land use, and its historic preservation district is made for a public purpose. It's not automatically a public purpose. It's subject to tests in the courts whether it was a public purpose. I don't want somebody telling me that your land, or this land you've got over here, you've got to farm sugar cane on it, you've got to farm rice on it, you've got to have a barroom on it. If they regulate my land use that way, I want to make sure that it's subject to review in the courts plus that there are hearings that is subject to due process of law, and this is all it does. Before they tell you what you can do with your land, it is subject to due process of law, which means notice and hearing, very simply. It doesn't tell the municipality they may not do it, doesn't tell them they cannot do it. All it says is if you do it, you've got to have a reason for it, and it has to be with notice and hearing to the persons affected—very simple. All it does is keep it in line with what I think the people of this Constitutional Convention want in their constitution, somebody not having their property rights taken away from them without a notice or a hearing, and that's all the amendment does, and I urge the adoption of it. Thank you.

Questions

Mr. Roemer Mr. Arnette, as I understand it, all

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fact subject to review by the courts of whether or not it is a public purpose, as we've done in several other places in this constitution, is that correct? Is that all you're trying to do here?

Mr. Arnette That is correct. I just want to make sure that before it is made in any district or any land use regulation that it is subject to review by the court...

Mr. Anzalone Mr. Arnette, you're saying that the only thing that you want to do is to give the court some type of review over this matter of fact type of situation, but, in truth, is that all that you are doing?

Mr. Arnette Well, that's one thing I'm doing. The second thing I'm doing is I'm making it subject to due process of law, which means that before they can even enact such a regulation or an ordinance creating a district or land use or zoning, that they will have notice to the people involved and a hearing on the matter.

Mr. Anzalone Mr. Arnette, are you aware that Article XIV to the constitution of this United States says "property shall not be deprived without due process of law"?

Mr. Arnette You're exactly right, Mr. Anzalone, but there is a subtle difference between the taking of property and regulation of property, and I want to make sure that before even property may be regulated you can have a hearing, as is now, before zoning is enacted or land use regulation...

Mr. Anzalone Mr. Arnette, you're talking about due process because that's what you have written.

Mr. Arnette Just a second, let me answer your question first. O.K. What the difference between regulation and taking is that they may regulate your property without due process of law according to the U.S. Constitution, and this is the difference. I want to make sure that we have a due process of law, a hearing, and notice before they may even regulate your property as to zoning and things of this nature--land use regulation, historic preservation.

Mr. Anzalone Mr. Arnette, just one more quick question. What I want to impress on you is that, do you realize that you are shifting the burden of proof from the municipality to the other side of the coin?

Mr. Arnette Not necessarily.

Mr. Anzalone Yes, sir, you are.

Mr. Arnette No, I'm just making it from an absolute right on the part of the municipalities to create these districts. From an absolute right, I am changing it to having notice and hearing. It's very simple.

Mr. Arnette That's correct.

Mr. Vick Congratulations.

Mr. Arnette Thank you.

Mr. Vick On your examination on constitutional law, do you believe that you took an examination in constitutional law, and that due process doesn't include regulation?

the section as adopted--the Deshotel amendment--you could conceivably have at least six or four different procedures in each parish for adoption of land use and zoning regulations. Let's not get into the historical preservation aspect. It's a different issue. But each parish could decide how many, or how little, public hearings, advertisements, and the like, that they would have before they would adopt a zoning ordinance, isn't that correct?

Mr. Arnette That's true.

the next, you couldn't tell what type of procedures the local governing authority would be going through before they tell you what kind of use you can make of your land, is that correct?

Mr. Arnette Well, Mr. Deshotels, to make it a little bit more to the point is, what my amendment does is, it insures a hearing at all. Without my amendment, no hearing at all is needed, and that's exactly the point of this. I want to make sure at least one hearing is needed because notice of the people affected is given.

Mr. Kean Mr. Arnette, I find it a little difficult to follow your line of reasoning. I don't quite relate what you want to put in which reads "if for a public purpose" with your due process argument. Perhaps you can explain it to me, I don't understand it.

Mr. Arnette Well, it's just two different points. Mr. Kean. One makes sure that the regulation or the zoning is for a public purpose. The second thing, having to do with due process of law, makes sure that you have hearings and you have notice. It's very simple. It's two different points, but before you can do this, you have to have hearing and notice; and the second thing is, it is subject to review by the courts whether this particular ordinance is for a public purpose.

Mr. Kean As I understand it then, in order to adopt a zoning ordinance, a local governmental body would have to then go to court to determine if that zoning ordinance was for a public purpose. Then anytime that ordinance was amended a hundred times--you'd have to go to court to determine if each amendment was a public purpose?

Well, Mr. Kean, as I understand it, I may be completely wrong--but I would understand it as that the specific municipality affected could make the ordinance, but it would have to be for a public purpose.

then Discussion

Mr. Ava ask you

Mr. Arnette That's not all purpose that of

The is same is and I have

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a commission or a committee, or somebody, came up with what was called a "flood-plain zoning ordinance," and this is the type of thing that disturbs me. Under the provisions of that ordinance, if it were adopted—it's still in the mill—for a farmer to be able to change his land from pasture land to row crop land, he would have had to go and get a permit from the local building inspector, who was given charge of the administration of this ordinance, before he could change his land from one agricultural use to another agricultural use. I'm afraid that if this section is adopted as it's amended, that ordinances like that will be given validity and you won't have anything that you can do about it; you'll just have to live with it. And I, for the life of me, can never see or understand how, if a man had land in pasture and he decided he wanted to grow corn on it that it's in the public interest to compel him to go down thirty or forty miles to the parish seat and get a permit from some inspector saying it's alright, you can quit grazing cattle on that land, you can plant it in soy beans, you've got our blessings. So I ask you, and implore you to please adopt this amendment to put an end to that type of operation.

Further Discussion

Mr. Derbes I guess I'm wearing out my welcome, but I just want to say a couple of things in urging you to reject these two amendments proposed by Delegate Arnette. What we are doing here is, we are declaring that the concepts of zoning and land use regulation and historic preservation are a public purpose. Whenever the local governmental subdivision exercises its authority pursuant to this grant, whenever such authority constitutes a taking, the authority is still subject to the provisions of the Bill of Rights as we have adopted them. I think that it is implicit in that zoning regulations have to accord due process of law to any persons adversely affected. It's implicit! If we adopt a philosophical premise of this amendment... then we are going to have to... then it seems to me that we are going to have to come back on every section of this local and parochial Government Article, or any other section of this constitution which may, in one way or another, affect a person's right to use his private property, and apply the same type of restrictive language to each and every section. I see no reason for the inclusion of this language in this section. The language is indeed implicit in the law, it's implicit in the constitutional law of the United States of America and of the State of Louisiana. We have announced these principles clearly elsewhere in this constitution. It's superfluous in this section, and I urge your rejection of these amendments.

Questions

Mr. Duval Jim, I'm just trying to get some clarification. I thought one of the purposes of the Arnette amendment was to clarify language in your amendment, that language being "which authority is declared to be a public purpose," that specific clause. My question is: I read to you Section 1 of your amendment, "to adopt regulations for land use, zoning, and historic preservation, which authority is declared to be a public purpose." Now, if the authority is a public purpose, that doesn't necessarily mean, does it, that the use of the authority is a public purpose?

Mr. Derbes No. I think that's a very important consideration, Mr. Duval. In challenging the right of local governmental subdivisions to use this authority, the same principles and the same rights of individuals can be advanced in order to challenge that authority.

Mr. Duval Alright. I'm just trying to get the intent of your amendment so I can decide on the Arnette amendment. Now, let me ask you, what is the intent of that clause "which authority is declared to be a public purpose"? What is your

specific intent for inserting that clause?

Mr. Derbes My specific intent is simply to say when local governmental subdivisions enact such ordinances or regulations, or create such districts that they are acting in order to promote the health, safety, and welfare of the people. That's the intent of my amendment as it's drawn.

Mr. Duval You don't mean by that then, that the public purpose could not be attacked in court?

Mr. Derbes No, I definitely do not mean that.

Mr. De Blieux Mr. Derbes, wouldn't the Arnette amendment have the effect of requiring, you might say, a judicial decision everytime a zoning ordinance is passed to determine whether or not it is for a public purpose?

Mr. Derbes Yes, sir, and that's what I'm afraid of.

Further Discussion

Mr. Tapper Mr. Chairman, and fellow delegates, I've tried to stay away from the microphone for as long as I could, but I just don't understand the opposition to this amendment, and I rise in support of it. I think we're going from the sublime to the ridiculous. Anyone who does not want to afford people who are going to lose their property due process of law, and to say that it is in some other section of this constitution or that the Federal Constitution provides for due process, to me is putting your head in the sand like an ostrich. We are writing a state constitution, and the safeguards to the people of this state should be here in this constitution. We should not rely on the United States Constitution because that can be amended by someone else other than us. Now, I'm all for preserving the Vieux Carre, but not to the expense of the general public and the well being and welfare of business in the metropolitan area of the city of New Orleans. Ladies and gentlemen, I urge that you adopt this amendment. If it does exactly what is done in other sections of this constitution, then we do no harm. On the other hand, if we don't have this safeguard in the other sections of this constitution, we will do harm for a long, long, long time to come.

Questions

Mrs. Zervigon Mr. Tapper, you were talking about property being taken.

Mr. Tapper Or zoned for a particular purpose. Yes.

Mrs. Zervigon Do you... do you consider that property being taken?

Mr. Tapper Yes. I think you are taking the right of the people to use that property as they see fit when you zone it and tell them that they cannot use it for a particular purpose. Yes.

I think they should have the right to due process. If it takes a court action, if they do not agree with the decision of that commission that they should have the right to take that decision to court. Yes.

Mrs. Zervigon Haven't they got that right under Mr. Derbes' amendment, "if the power is unreasonably used"?

Mr. Tapper No, ma'am. I don't think so.

Mrs. Zervigon Haven't you always got the right to challenge the power of government if that power is unreasonably used?

Mr. Tapper We are writing a constitution, Mrs. Zervigon, and we are placing in here what rights we have as citizens. I think that this should be here.

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...that we are not going to challenge that authority.

Bill of Rights already in this constitution?

Mr. Tupper. But I believe the Bill is right. It
has to be read in, as we call it *pari materia*,
with this particular section. Mrs. Zervigon.

Mrs. Zervigon Are you trying to terrify me with those long words because I'm not an attorney?

Mr. [redacted] well, I think we have to give this section equal billing with the Bill of Rights.

Mrs. Zervigor. So you are going to introduce the amendment to every section we consider hence forth.

M. J. Griffin, *University of Southampton, UK*
S. A. Stulen, *USA*

Mrs. Zervigon How are you going to tell?

Mr. Tapper Either that or a general amendment providing, or rather, affecting all sections of this constitution.

Mrs. Zervigon Well, the first section of the Bill of Rights, where it says "these rights are inalienable and shall be held inviolate" doesn't do that?

Mr. Jervison. I'm not going to be the judge sitting on it, I don't think, Mrs. Jervison. But I'm afraid it might not. I can't see any harm in adopting this amendment because it does no injustice to this constitution or to any commission.

I urge the adoption of the amendment.

Further Discussion

Mr. Keane: Mr. Chairman, fellow delegates, I rise in opposition to the amendment because it seems to me that if we adopt it, we have simply gutted zoning and land use authority in this state. I don't have any objection at all to providing, either by a statute or by a regulation, that the exercise of this authority that there would be an opportunity for a hearing. Such opportunities could be provided by general law as far as I'm concerned. But when we start off by saying that you can exercise this authority if for a public purpose, it would simply mean that there are any number of ways to exercise authority, that you'd have to have a lawsuit in order to determine, in the mind of the court, whether it was for a public purpose, and we're really not talking about public purpose and the use of zoning and land use regulations in the first place. Zoning and land use regulation is an exercise of the police power, and it's not a

23 The question which is raised in connection with
24 the exercise of the police power is whether it is
25 reasonably used. If that exercise, either generally
26 or specifically, results in unreasonable or arbitrary
27 action, under those circumstances, it's void.
28 We talk about public purpose primarily in the sense of
29 the public purpose exception to the interpretation being
30 made as to whether or not a public purpose existed
31 which required that taking.

In this instance, where we say we can do it "if for a public purpose", and as I read the amendment, you would never have zoning or land use regulation authority until after it had been determined in each and every use of that authority, that it was for a public purpose. Now, I don't know what happens in other cases, but in the parish of East Baton Rouge, for example, we have a zoning ordinance that has been amended so many times that we have a hundred amendments to that ordinance. As I understand it, you would have to go through that process by this "if for a public purpose" criterion. You would simply have no zoning until after that test was met. I think that would be a very good way better way to get at the problem of due process.

simple device of providing by amendment to this, that you are either entitled to notice and hearing, or that the legislature can establish procedures by which it can be done.

But if you leave "if for a public purpose" in here, you might as well take the section out and forget it, in my opinion.

Mr. Kean, you stated that zoning and land use regulations had nothing to do with the public purpose but instead were an exercise of the police power.

Mr. Kean. That's —

Mr. Avant: It's an exercise of that power that allows government to legislate in order to promote the health, welfare, morals and safety of the general public. Isn't that right?

Mr. Kean. That's correct.

Q. Avant
A. Not? So it is for a public purpose.

Mr. Kean My point is the very one that Mr. Duval was making a while ago. You talk about zoning being an exercise of the police power, it is a public purpose. There's no further discussion to be had on it. What you are now talking about is whether or not the specific use of that authority is reasonable or unreasonable.

Mr. Avant: Now, if it is used and it's not for a public purpose, you say putting "public purpose" in there, and "due process of law" in there, guts the amendment of Mr. Derbes. Well, if you can use it for other than a public purpose, or use it without due process of law, as I'm afraid you might be able to do as it's now written, don't you think it best be gutted?

Mr. Kean. No, my point, Mr. Avant, is that if you leave in the language "if for a public purpose," it has the result of making this particular provision unworkable.

Q. Roy I would like to have gone further...
A. Avant, but, in any event, how can you justify
that the public purpose...that you could allow the
conveying of property without it being for a public
purpose? Zoning this for a private purpose?

Avant Zoning, Mr. Roy, being an exercise of police power, is for a public purpose. The question of a zoning situation is whether or not the specific use of that authority is reasonable or unreasonable.

Mr. Roy: Isn't it only for a public purpose if it is for the public purpose and not to help some individual out?

Mr. Avant. Zoning is an exercise of the police power, Mr. Roy, and it starts off being a public purpose.

zoning for a public purpose, does it, Mr. Keen?

the specific use of the zoning authority is reasonable or unreasonable.

"...and it is obvious that the
...is to help them.
that it was trying to be zoned to help them. Isn't
that true?"

```
def __init__(self, width=100, height=100, color='black'):
    self.width = width
    self.height = height
    self.color = color
```

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Mr. Keane For the simple reason, Mr. Roy, that you'd have to make a specific determination on every specific use of the authority before it became valid.

[Previous Question ordered.]

Closing

Mr. Arnette I just have a very few short things to say, the first one being if due process is implicit in the Derbes amendment, then why are the opponents of it fighting it so hard? That's the first question.

The second thing I'd like to point out, I don't know if Mr. Vick is aware of it, the Supreme Court of the United States has pointed out that regulation is not taking, in certain instances, it is not taking when it...unless it is actually taking the property, when it prevents the profitable use of the land so as to greatly decrease its worthfulness, or when affects a very small number of people. Now, this is when regulation is a taking; in no other case is it a taking. Regulation is not subject to the due process clause of the Fourteenth Amendment of the United States. It simply is not, unless one of these three requirements are met.

Now the next thing, Mr. Derbes said the public purpose of this zoning, or historical preservation district, may be attacked. Well, if it may be attacked under his amendment, then let's make it very clear that it may be attacked because this is what my language does. It makes it very clear that this ordinance may be attacked as to whether it is a public purpose or not.

The next thing, A judicial interpretation is only required when a citizen who is affected files a suit attacking the ordinance. You don't have to go to court and say, "Court, may I pass this ordinance?" That isn't the way it works. The way it works is, you pass the ordinance and somebody who doesn't like it files suit. I want every person who is affected to have that right to file suit. The next thing that Mr. DeBlieux mentioned is, "overlooks, just a slight omission, it permits people who have prohibitions in a home rule charter from zoning or from creating historical districts, or things like this, it automatically permits their people, or their governing authority to do these things, which is against their own home rule charter that they have adopted. It takes home rule away from the people. We are telling those people "this is what your governing authority can do, and we are going to shove it down your throat whether your home rule charter says otherwise or not."

I'd like to close with a very short statement, that I don't want any property of mine ever regulated or taken unless one, I have notice that it's taken; two, that I have an opportunity for a hearing before the authority who is taking or regulating my property; third, judicial review that what the people who are in the governing authority, what they are doing is right and for a public purpose and not just to hurt me. I think every citizen who owns any property in this state should have those three simple protections; notice, hearing and judicial review. That's all I'm asking for in my amendment.

Questions

Mr. Lennox Mr. Arnette, there is one matter that troubles me deeply. I am wondering that had you given the bar examination to Mr. Vick, if you'd care to speculate on the outcome?

Mr. O'Neill Mr. Arnette, have you yet found out what the term "land use" means? Don't you think that perhaps we should provide some protection under here for such comprehensive zoning as land use might entail?

Mr. Arnette You are perhaps right, Mr. O'Neill. Land use is kind of a vague term. But I think the main thing is that we need this...we need the...the three things that anybody needs before their

property is taken, is notice, hearing and judicial review. That's all my amendment asks for.

I ask you to vote for my amendment. Thank you, very much.

Mr. Lanier Mr. Arnette, is it not true that primarily your objection is to the procedures in which this is done rather than the basic law isn't it also true that if your amendment passes, it will do substantial violence to the concept of zoning as we know it today?

Mr. Arnette Well, Mr. Lanier, you asked me two questions. First of all, is my objection merely procedural? No, not actually because my own primary objection is that this gives an absolute right to the political subdivision who is enacting these particular ordinances; it gives them an absolute right to do that....

[Record vote ordered]. Amendment rejected: 51-56. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. DeBlieux]. On page 11, line 11 in Floor Amendment No. 1, proposed by Delegate Derbes and others, as amended by the convention on today, on line 9, immediately after the word and punctuation "structures," delete the remainder of the line and delete line 10 in its entirety.

Explanation

Mr. DeBlieux Mr. Chairman and ladies and gentlemen, I think each one of you have a copy of the constitution as it presently exists on your desk. I'd like for you to turn to page 406. If you do not have it available, if you'll pick up the amendment, floor amendment which Mr. O'Neill had, it contains practically the same identical language. Now my purpose in this amendment is that what we are doing by the Derbes, the last sentence of the Derbes amendment, we are putting all of that language into the present constitution which we are adopting. What I mean is, we are just transferring that language into our present constitution.

I don't know of anything, anything that the city of New Orleans, in which I am very much interested, and I hope...I know we are not doing any violence to it, could not do with reference to the Vieux Carré Commission without that sentence. But what you are doing is putting into the constitution the Vieux Carré Commission as it's presently in the constitution because you are adopting all of that by reference and it makes every bit of it just as much a part of this constitution as if you had written it in. I say, if you want it to be a part of this constitution, you should write it in. Don't adopt it by reference. I ask you to strike from that particular amendment of Mr. Derbes the last sentence and let it go, so that they'd still be able to do everything they are doing except that we will not have all of this language. Just look at it....all of this language and two pages in the new constitution because that's what you are doing.

Questions

Mr. Roemer Senator, I understand that by the deletion of that sentence which is what your amendment purports to do, we don't reference the old constitution. Is that correct?

Mr. DeBlieux That's correct.

Mr. Roemer Then what effect does that have on the Vieux Carré Commission?

Mr. DeBlieux Not a bit because they still have the same authority, they still have the right to establish any districts or any commission or anything they want to do.

constitutional from this point on as a result of the elimination of the last sentence?

Mr. Roemer Well, if we don't refer to the old constitution which has the language, and we don't put the language in the new constitution...then...in the new constitution, is the authority for the Vieux Carré constitutional law?

Mr. Casey Senator De Blieux, I think Mr. Roemer asked a very pertinent question. I really don't think it was answered. I think his question was, if you delete that sentence, then is...after the adoption of the new constitution with the deletion of that sentence, is the authority of the Vieux Carré Commission constitutional? I would think, is it not correct, that if you delete this sentence, then the authority is not constitutional. It would become statutory, would it not?

Mr. Casey So then, what you are doing in effect, is completely eliminating the constitutional authority of the Vieux Carré Commission.

Mr. Velazquez: Senator, are you familiar with the ...with the differences of opinion between the state fire marshal's office and the Vieux Carré Commission through the years?

Mr. Velazquez: Well, it's been a long struggle between the late fire marshal's office and the Vieux Carré Commission over who has jurisdiction over various issues. The courts have repeatedly stated that the Vieux Carré Commission has authority over the fire marshal's office in the Vieux Carré itself because the Vieux Carré Commission has constitutional status.

Mr. De Bileux: Well, Mr. Velazquez, what I say, if you want to let the people decide, you should let them refer the language to the people. That is what I am referring to. Then, what I am referring about. We are adopting this language by reference, and I think you should spell it out in the constitution rather than doing it by reference. Because, when you get through, if you adopt any of these plans, particularly the one that I am referring to, you will really have two constitutions. You will have the constitution that we have today, and you will have what you've got in the 1974 constitution.

when the committee tried to adopt the home rule charters of the five different areas by reference? Isn't this the same situation? Didn't we take out that reference about home rule charters earlier?

Further Discussion

We are dealing with an area of the State of Louisiana which is emblematic and classic in its significance to the state as a whole; the reputation of the state, and the prestige of the state throughout the world. There is no district or area in this state which has gained so much recognition world-wide as the area of the parish of Orleans, the city of New Orleans. We say that will all due respect to my fellow delegates from elsewhere in the state.

Mr. Gravel: Mr. Derbes, as you know, I've discussed this proposed proposal with you when we had the chance a few moments ago. I would now be of the opinion, in view of your statement with respect to the last sentence, that it applies only to the Vieux Carré Commission, that that last sentence could be relegated to the schedule of any proposed... of our proposed constitution?

Mr. O'Neill Well, Mr. Derbes, if it's relegated to the status of a

Mr. Willis Mr. Derbes, don't you think that we
 are in a position to make a statement in the market
 that we think it will be profitable to make a
 statement in the market and we think with experience
 we can make a statement in the market.

REMARKS. The first two conditions are satisfied by all functions f satisfying $|f(x)| \leq |x|$, while the third condition is satisfied by all functions f satisfying $|f(x)| \leq |x|^2$.

[1546]

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Mr. De Blieux Mr. Chairman and ladies and gentlemen, my only purpose in offering this amendment is to have an orderly procedure to the constitution which we are adopting. We are going to need, if we use this technique of adopting a section of the 1921 Constitution by reference, you are going to need two constitutions to know what the law is, the Constitution of 1974 and the Constitution of 1921. You are going to make this '74 Constitution maybe even longer than the '21 because you will have to contain all the provisions of the 1921 in the '74 Constitution. What I say to you now, is let's eliminate this and let the city council of New Orleans, they have authority, this is constitutional authority in the Derbes amendment, try for that sentence to have the constitutional authority for a Vieux Carré district. That's all they need. You don't need to put the very language in as to who's going to be on the commission, how it's going to be appointed, when a vacancy occurs, who's going to fill it, and all of that business. That's what's contained in this language. That's what you have in the language...the...amendment right now. That will be a part of the constitution if you don't take that one sentence out. Now I'm asking today to let's get a good constitution and don't clutter it up with a lot of statutory language.

I ask you to approve the amendment.

Question

Mr. Nunez Senator De Blieux, wouldn't you say it was true if the mad man of World War II, Adolph Hitler, and his generals thought enough to preserve the great cultural and historical monuments of France and London and England, and several northern...Western European towns that we, in Louisiana, should think enough of our cultural history to put one line in the constitution?

Mr. De Blieux Senator Nunez, you're not putting one line in. You are putting all of this language in the constitution is what I am trying to tell you. That's what I'm talking about. Not one line. I wish it was all in one line. I certainly would not object to one line in the constitution. I'm for it. I want to preserve those historical places, but let's don't clutter up the constitution with who's going to be on the commission, when there's a vacancy occurs, who's going to fill it, how they are going to go about their business, and all of that kind of stuff. I just don't think that belongs in the constitution.

[Record vote ordered. Amendment rejected: 25-77. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Deshotels]. Page 11, line 11, in Floor Amendment No. 1, proposed by Delegate Derbes and others and adopted today, on line 2 immediately after the number and punctuation "19." and before the word "governmental", delete the word "local" and insert in lieu thereof the following "subject to uniform, legislatively established procedures local".

Explanation

Mr. Deshotels Mr. Chairman, ladies and gentlemen of the convention, this goes to the issue that we spoke of earlier concerning notice and hearing. I think that if you think about it a little bit, that you will want to know how each parish, each municipality goes about zoning. This doesn't have anything to do with the historical preservation that Jim Dennis spoke of. He got us involved in that. I think, without meaning to. But this is simply so the legislature can pass a statute saying that you have to have so many hearings, you have to have so many advertisements, and these things have to be public before you can zone, or before you can restrict land use.

It's a simple amendment. I think that we would

be derelict in our duties and in an orderly...in the search of an orderly government, not to have some uniformity in our zoning and land use restrictions.

I respectfully request that you adopt the amendment.

Any question?

Questions

Mrs. Zervigon Mr. Deshotels, in the event that the legislature doesn't pass the general law outlining these procedures, we could continue to operate under the procedures we now have. Isn't that the case?

Mr. Deshotels Yes, because you've just voted to retain that last sentence on your Vieux Carré, so I assume that you would continue to operate that way. Mrs. Zervigon, without getting into the issue, I think it would be inconceivable that the legislature of the State of Louisiana, assuming that the answer was in the negative, would refuse to establish procedures and thereby, restrict and curtail the...all of the zoning and land use activities of all the...of all of the subdivisions of the State of Louisiana.

Mrs. Zervigon It's not your intention to bar the city of New Orleans, for example, should we want to establish even more restrictive and detailed provisions. It's only your intention to set up minimum procedures to say, for people's rights. Is that correct?

Mr. Deshotels Other than going to New Orleans and having a meal now and then, I don't want to do anything in New Orleans.

Mrs. Zervigon Thank you.

Mr. Roemer Mr. Deshotels, don't you think we have the obligation in this constitutional convention to protect the citizens of New Orleans as we do the citizens of any other part of this state?

Mr. Deshotels Mr. Roemer, I assume that you want a serious answer to, maybe, a frivolous question. Of course we do.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, I see no objection to the adoption of this amendment. I believe that it takes care of some of the problems with respect to the method by which zoning and land use regulations would be adopted. This affords the legislature the opportunity to set up those procedures.

Questions

Mr. Jenkins Mr. Perez, would you object to language which would insert after the word "procedures" in Mr. Deshotel's amendment, the words "of the local government charter...or the local charter" because, you know, we may have provisions in some local government charters which restrict or prohibit land use or zoning or functions like this. We want to make sure that these charters will be superior to this provision.

Would you have objections to that?

Mr. Perez Do you have such language? I'd be glad to...can you suggest the language at this time?

Mr. Jenkins Yes, sir, I would say after the words "procedures and the local charter". That's what I would suggest. I don't have an amendment to that effect.

[Perez is questioned. Answer: Revised vote ordered. Amendment adopted: 96-4. Motion to reconsider rejected. Motion for the previous question on the matter.]

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"Amendment No. 1. Page 11, line 11 in the floor amendment proposed by Delegate Derbes and adopted today:

On line 3, after the word and punctuation "preservation," delete the remainder of the line. On line 4, at the beginning of the line, delete the words and punctuation "is declared to be a public purpose;" and insert in lieu thereof the following, "subject to due process of law".

Point of Order

Mr. Kean I ask a ruling of the chair as to whether or not this is not the same proposed amendment which was just debated and voted down a few moments ago?

Mr. Henry Mr. Kean, looking at the amendments, I'm going to use the same procedure that we've used on a couple of sets lately when it...the Chair cannot be absolutely certain.

Ruling of the Chair

Amendment

Mr. Poynter: The next amendment sent up by Delegate Jenkins.

different... in Floor Amendment No. 1 proposed by Delegate Derbes and adopted by the Commission on today, at the end of line 1 of the Deshotels amendment, after the word "procedures", and before the comma "," insert the following: "and the local

Explanation

Mr. Jenkins: Mr. Chairman, delegates, again this is in response to the objection raised by Mr. Arnette who said that even though a local home rule charter might forbid the local governing authority from engaging in zoning or land use regulations, this constitutional provision would give them that authority, despite the charter. Subject to uniform legislatively established procedures and the local charter, local governmental subdivisions shall have authority," and so forth. It just makes it clear that the local charter can restrict the authority of the local governing authority. Of course, because of this language, the authority of the local governing authority to engage in land use, planning, and zoning would not be dependent on the charter. Their charter could only restrict it. So, I urge the adoption of this amendment.

Mr. Tapper. Woody, when you say "general law and zoning," are you saying that there is no local charter, that there can be no zoning?

[illegible]

procedures?

Mr. Jenkins: Mr. Gravel, this does not... the word "uniform" does not modify "local charter." It says... now, let me read you the way it will read. It will say, "Subject to uniform legislatively established procedures and the local charter, local governmental subdivisions." "uniform" does not modify "local charter." "The" is the only word that modifies "local" and "charter" there.

Mr. Gravel Well, then, my second question would be: suppose that there was a uniform procedure established by the legislature, and there was a conflict with the procedure established by the local charter; which would prevail?

Mr. Jenkins The language "and the local charter does not regard procedures at all. By this amendment we're making the authority of local governmental subdivisions subject to two things: first, uniform legislatively established procedures and second, the local charter

Mr. Javel: I see. Thank you.

Mr. JARVIS: That is all. There can't be any con-
flict between those two.

Further Discussion

Mr. Kean: Mr. Chairman, fellow delegates, I don't have any objection to the concept that Mr. Jenkins is suggesting except I'm concerned about the manner in which this would read if his amendment is adopted. I see several problems. The first is "Subsequent to the uniform legislatively established procedures and the local charter," it would be a requirement that you have something in the local charter under which these particular procedures could be carried out, and in the absence of having something in the local charter, you have no way of knowing what to do. In addition, it raises this question in my mind and Mr. Gravel has pointed to in his questions, and you would be getting away from the very thing we were trying to establish in the first place with the amendment, and that is to have a uniform procedure for all of the municipalities. I think it would be possible to come up with some amendment which would read that "unless otherwise provided by a home rule charter or plan of government," and get the point that Mr. Jenkins is talking about in this, but I think that this proposed amendment here would raise a number of problems and create a difficult interpretation of the second one.

Mr. Tobias Gordon, don't you agree that this amendment, if adopted, we would have a confusion because it would in effect read, "uniformly established local charters"?

Mr. Kean: That's the question Mr. Gravel was getting into...

"I am going to vote for this amendment, because with this particular amendment,... I understand what Mr. [unclear] wants to do, and I believe like everybody else here, I support it."

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Reading of the Section

Mr. Poynter "Section 20. Zoning.

Section 20. Local governmental subdivisions may enact land use regulations and zoning ordinances and create and classify therein residential, commercial, industrial, and other districts, and may regulate the preservation of the character of buildings, monuments,...

[Motion to waive reading of the section adopted without objection.]

Explanation

Mr. Perez I just wanted to call to the attention of the delegates, we have taken care of zoning and land use measures in Section 19, and that we should delete Section 20.

Mr. Henry We have an amendment for that purpose.

Amendment

Mr. Poynter Mr. Derbes offers the amendment. On page 11, delete lines 26 through 32, both inclusive, in their entirety and on page 12, delete lines 1 through 3, both inclusive, in their entirety.

Mr. Henry Mr. Derbes, do you want to speak on your amendment?

Mr. Derbes Absolutely not. Thank you.

[Previous question ordered. Record vote ordered. Amendment adopted: 107-1. Motion to reconsider tabled. Motion to consider Section 23 previously passed over adopted without objection.]

Reading of the Section as amended

Mr. Poynter "Section 23. Intergovernmental Cooperation.

Section 23. (A) Any political subdivision--- and the language "or school board" was amended in; that same amendment comes in four different places --may exercise and perform any of its authorized powers and functions, including financing, jointly or in cooperation with one or more political subdivisions or school boards, either within or without the state, the United States or agencies thereof, except as the legislature shall provide otherwise by law.

(B) Except as otherwise provided in this constitution, the legislature shall not require political subdivisions or school boards to exercise powers or perform functions jointly or in cooperation with any other political subdivision, or school boards, nor shall the legislature require consolidation of governmental functions of local governmental subdivisions. However, the legislature may enact laws authorizing the consolidation of political subdivisions or the joint exercise of powers and performance of functions by political subdivisions, but no such law shall become effective until submitted to and approved by two-thirds of the electors in each of the political subdivisions affected thereby, who vote in an election called for that purpose."

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Flory]. On page 12--this is the Flory amendment--line 27, at the beginning of the line, before the words "the United" add the word "with".

Explanation

Mr. Flory Mr. Chairman and delegates, if you recall a discussion that we had yesterday as it relates to political subdivisions entering into agreements with the United States, agencies thereof, or with political subdivisions within or without

this state, there was a problem that possibly reading it, it could be determined that a political subdivision in Louisiana could enter into an agreement with a foreign power. Adding the word "with" on line 27 before "the United States," I think, clarifies it to the extent that there cannot be any agreement entered into between a political subdivision, the state, or agency thereof, with any foreign power, and I know of no objection to the amendment.

Questions

Mr. Casey Mr. Flory, I admit that the amendment has been on the desk for a while, and I'm concerned about the extent and effect of it. My concern is, for instance, with the Port of New Orleans or any deep-water port in any contract that may be executed with a foreign government; would this now be prohibited; if...depending on if a port authority is considered as a governmental unit? I don't know that it is. Is it, first of all?

Mr. Flory Well, all I know is under the existing constitution--and I don't know what's going to happen when we get into some of the other areas as far as the Port of New Orleans--I know at the present time the Port of New Orleans is considered an agency of the State of Louisiana. I've had this discussed with some of the authorities of the Port of Baton Rouge, and they suggested that with the word "with" here would not interfere with any operation of the Port of Baton Rouge, and consequently, I'm of the opinion it would not interfere with any of the functions of the Port of New Orleans. Their contracts, etc., here deal with leases, etc., with corporations in Louisiana; they do not have any contracts or dealing with a foreign power as such.

Mr. Casey Now, the other question I have is: in the case, for instance, of the city of New Orleans, it is my understanding that at this time the city of New Orleans is negotiating with the Spanish government for the construction of a Spanish plaza, or maybe it's the French government for the construction of a French plaza; would something of that type then be prohibited under Section 23--for the construction by a foreign government for and on behalf of the city of New Orleans for the construction of plazas?

Mr. Flory Not to my knowledge and understanding, Mr. Casey, particularly based upon actions of the past. If I'm correct, I believe that those are acts of donation by foreign countries to the city of New Orleans that you referred to in the past.

Mr. Casey Well, what concerns me is that we, in effect, are talking about the exercise and performance of authorized powers and functions including financing, jointly or in cooperation. My understanding is that one of the functions or authorities of any political subdivision is to accept a donation. It is my understanding, under the interpretation that we are giving this section right now, that any political subdivision would not even be able to accept a donation.

Mr. Flory I don't agree, Mr. Casey. If you'll read the first sentence, it said, "Any political subdivision may exercise," etc.

Mr. Casey Well, that's correct. I agree with you that it reads that way.

Mr. Flory But the word...inserting the word "with" before "the United States" does not prohibit what you're talking about, in my judgment.

Mr. Casey Well, you are limiting this to the action of any political subdivision in Louisiana.

Mr. Flory I'm not granting specific authority, but at the same time, it's not prohibiting it, if you read the whole Section 23, the first paragraph between lines 23 and 28.

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that school boards be able to consolidate with a majority vote. Now, I don't know whether this convention will want to go that route or not, but not wishing to in any way preclude a decision on that topic until we get to the Education Committee report, it seemed wise to put in here "except as otherwise provided in this constitution" to the two-thirds requirement for consolidation of functions.

Questions

Mr. Dennis Mr. Burson, as I understand this section, as it has been amended by your amendments and others and also with this one you are proposing, although you've added "or school board" in some places, the total effect will be that consolidation of school boards will not be governed by this section, but will be governed by something else in the constitution or somewhere else. Is that right?

Mr. Burson Yes, sir, by the appropriate section, Judge Dennis. I think you were one of them that brought to my attention that probably the Education Committee, nor the present law, would require two-thirds vote to consolidate school districts. I don't think that was the intent...

Mr. Dennis So, even if we pass this section, it will not mean you have to get a two-thirds vote to consolidate school systems.

Mr. Burson That's the purpose of the Second Amendment, is to make this plain.

Mr. Singletary Jack, is it your intent to, when we get to the definition at the end of the committee proposal, to redefine "political subdivisions" ...to exclude school boards?

Mr. Burson No, to include school boards in it, but only to exclude them in sections where the sections are not applicable in the article. You've got to do it one way or the other.

Mr. Singletary Do you have some suggested language to accomplish that purpose?

Mr. Burson We'll have to cross that bridge when we get to it, Alvin, but...in other words, I started off on the other premise, but after the problems inherent in it were pointed out to me by a number of people, I decided it was unwise and went back, and that's what I'm doing now, is to try and rectify an earlier mistake in that regard.

Mr. Singletary I agree with your purpose. I'm just wondering now we are going to accomplish that.

Mr. Burson Well, I think just including "school boards" in the definition of "political subdivisions," if we've excepted them everywhere they should be excepted, should present no problem.

Mr. O'Neill Mr. Burson, I was on the Committee on Legislative Powers and Functions, and I thought that we had put all the limitations we were going to put on the legislature in that article, but Section (B) of this proposal is a very strict prohibition against the legislature. I wish you'd address yourself somewhat to that, since you're the first member of the committee that's been up speaking on this.

Mr. Burson Mr. O'Neill, I think quite clearly that that Section (B) emanates from a great fear that certain political subdivisions have, or people from certain political subdivisions have, about forced consolidation at some future date. That's the only explanation that I have, but I think if you'll just think of Jefferson and Orleans, right off the bat you get the message.

Recess

[Quorum called. Mr. Burson presented and a quorum. Amendment withdrawn.]

Mr. Henry Read the Burson amendments, Mr. Clerk. Give the Clerk your attention, please, so this can be properly read. You're going to have to make a correction 'cause it's still not drawn right. Read it, Mr. Clerk.

Amendments

Mr. Poynter Now, you wanted all four of those previous amendments out, right, Mr. Burson?

All right. On page 12, delete Floor Amendments No. 1 through No. 4 to Section 23 proposed by Delegate Burson and adopted Saturday.

Amendment No. 2. On page 13, between lines 8 and 9, insert the following:

"The provisions of this paragraph shall not apply to school boards".

Explanation

Mr. Burson The explanation is still the same. You want paragraph (A) to apply to school boards because you want them to have the power to consolidate or exercise functions jointly. You do not want paragraph (B) to, because the Education Committee has got a different set-up. It's as simple as that. We're deleting the amendments because we want to include school boards as they traditionally have been, as a political subdivision except where it doesn't fit.

Mr. Perez I see no objection to the amendment.

[Previous questions resolved.]

Questions

Mr. Gravel Mr. Burson, I notice that the new amendment, as prepared, doesn't have the provision in line 5, on page 13 after the word "but"... "except as otherwise provided in this constitution". Was there some reason why that is not needed now?

Mr. Burson Yes, sir, the reason is that the intent I had with the motion was simply to say that it shall not apply to school boards, and they said, "Why don't you just go ahead and say it that way because it really fouled up the language of the other sentence?" It didn't come out very well, to say the least.

Mr. Gravel Do you think that the provision on line 29, page 12 is applicable then to the entire Section (B) and modifies the entire section "except as otherwise provided in this constitution"?

Mr. Burson Yes, sir, that was the...that's what was Mr. Keen's point. He said if you don't want paragraph (B) to apply to school boards, just say that, and that's why we added the sentence.

Mr. Gravel Well, would you have any objection to leaving in that particular part of the amendment that provided to make it clear, on line 5, page 13, after the word "but"... "except as otherwise provided in this constitution"?

Mr. Burson No, I really don't have any objection or desire one way or the other on it. The opinion of most people was the...saying "except" one time probably should be sufficient. But, the only thing I want to do is just to make sure that school boards would not be infringed upon with the education article provision of a majority rather than a two-thirds vote.

Mr. Nunez Mr. Burson, rather to insert school board in every paragraph or sentence that you think this should apply to, would you find any objections to putting it in the back under political subdivisions, the definitions you have here? "Use parishes, municipalities and any other unit of local government including special districts or provided

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by law to perform governmental function." Why don't we just put school board in here? Whenever they say political subdivisions, I think school boards would be covered, rather than just keep saying school boards...

Mr. Burson The problem is, Senator Nunez, there are some articles in here where you give powers to political subdivisions that you would not want to go to school boards. That's where you have to put the exceptions in.

Mr. Newton Mr. Burson, I don't know if this question is necessarily pertinent to your amendments, but in reading Section 23, paragraph (A) about these political subdivisions exercising these powers jointly, on what authority would they do this? Just a vote of the police jury, the two police juries, or would the people have anything to say about that?

Mr. Burson Well, of course, I think there you would get into Section (B) that the consolidation or joint exercise of powers would not become effective until two-thirds of the electors had approved it.

Mr. Newton I don't read it that way.

Mr. De Blieux Mr. Burson, as I read this particular provision, without your previous amendment or this one, there could be no consolidation of the city and parish school boards in the parish of Ouachita or the parish of Washington except by vote of the people. Now, if we insert your particular amendment here, couldn't that be interpreted that the legislature could consolidate those school boards without a vote of the people?

Mr. Burson No, it would not.

Mr. De Blieux Why not?

Mr. Burson Not since the Education Committee has got a specific article on that point. See, the problem that you're raising in your question is the exact reason why I offered the second amendment because somebody else pointed that out to me Saturday. I know that the Education Committee has an article on that point, so, it's no use to me—counter that problem at this time. We'd really be...

Mr. De Blieux Well, wouldn't there be a conflict between these two articles? Now, look at the word "and" the language very carefully, now, and then insert that language there and now if that wouldn't exempt school boards from the particular legislative authority.

Mr. Burson Well, again, Senator, it might if we didn't know that the Education Committee has got something coming on it, just like a lot of questions in revenue and taxation we don't cover because we know the Revenue and Taxation Committee has covered.

Mr. Tate Mr. Chairman and fellow delegates...

Mr. Tate Mr. Chairman and fellow delegates...

for instance, we love levee districts. I love levee districts; I love all kinds of things. I love the Ville Platte Community Council on the Aging. I love the Jefferson Parish and Westwego Parish, but I would like to know for sure, for sure that this means that we can't get rid of, consolidate agencies of government that no longer perform their function. That just, perhaps, serve to provide jobs...or, that could be performed...function that could be performed more efficiently by state agencies or by a consolidation by the local government, anyway you want to say it except that each single little levee district, each little gravity drainage district has to vote two-thirds of the electors in favor of it. I'd like to understand the purpose of the amendment.

Mr. Flory Judge Tate, had just raised that same question, but I'm going to ask you to go back to lines 3, where, at the end of the sentence...that says "or the joint exercise of powers and performance of functions by political subdivisions," on page 13. As I understand that, that would prohibit the legislature from authorizing the cooperation between New Orleans and Baton Rouge airport districts, if they so chose, to work toward a regional airport unless they got two-thirds of the votes in each respective district. Is that not correct?

Mr. Tate It seems to me that it means that, and it seems to me that it's subject to a great deal of question and a great deal of debate. I...I've just raised the question. If there are no questions and if there are no questions, I would move that when we vote on this, Mr. Chairman, I'm entitled to ask a division between (A) and (B)? No, how do I do that? Amendment to delete. Well...

Mr. O'Neill Well, Judge Tate, then you would agree that this is a rather severe limitation on the legislature within the Local Government Article where I don't think we should be prohibiting the legislature from doing anything?

Mr. Tate I'd agree completely, Mr. O'Neill.

Mr. O'Neill Thank you.

Mr. Rayburn Judge Tate, I'm wondering, under the language I'm reading here, what effect would this language have on presently created districts that are now in operation?

Mr. Tate It would seem to me, Senator Rayburn, under the definition of a political subdivision in page 27, it means "any other unit of local government including special districts authorized by law to perform governmental functions." I would just think frozen in are all those little subdivisions. I would think, that cannot be consolidated except by an election with two-thirds of the votes. I may misunderstand the amendment, but that's the way it looks to me without...

Mr. Tate Mr. Chairman and fellow delegates...

Mr. Tate Mr. Chairman and fellow delegates...

Mr. Tate Mr. Chairman and fellow delegates...

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is it? Wouldn't this permit arrangements whereby out of state law officers could come into our state or into a city and make arrests and take over and exercise the functions of law enforcement within this state?

Mr. Tate I suppose I'm supposed to answer yes, Mr. Avant, but...

Mr. Avant I want to know.

Mr. Tate Well, ask me the question one more time, I lost you.

Mr. Avant I want to know if this would not permit, if local government decided to make such a deal, out of state law enforcement officers, say, from Mississippi, Arkansas, Texas, or you name it, to come in this state and exercise law enforcement powers in an area in this state just on the say-so of the local governing authority?

Mr. Tate Well...if I understand your question, then, it doesn't seem to prohibit that, it just prohibits two local subdivisions cooperating together unless two-thirds of the vote...of the electors in each subdivision...

Mr. Avant Well, I'm talking about (A). I'm looking at (A).

Mr. Tate Oh, Mr. Avant, I'm not rising to do more than raise questions as to (B)...let's see what (A) says. I'm not on the committee.

Mr. Avant Well, you've read it...

Mr. Tate Yes, yes, I would agree with you, Mr. Avant, it does. I would agree with you it does.

Further Discussion

Mr. Toomy Mr. Chairman, fellow delegates, I rise in support of this section as it stands right now. I'd like to bring to your attention that Subsection (A) merely authorizes the parishes, and cities, and political subdivisions of whatever they might be, to perform any governmental functions at their will. It authorizes them that they may do these if they so please. Subsection (B) only applies in the case where the legislature requires political subdivisions against the will of the political subdivisions, to cooperate into any governmental cooperation venture. Let me bring to your attention that it was the feeling of the committee, that should the political subdivision be opposed to such cooperation, that it would be left to a vote of the people. If the people wished to join into such a venture, that the political subdivision would do so. Let me further bring to your attention, a number of people have questioned the two-thirds provision. On page 13, line 3, we are talking about "the legislature may enact laws authorizing the consolidation of political subdivisions or the joint exercise of powers and performance of functions by political subdivisions." This, in essence, is consolidation and mergers of political subdivisions. Let me further bring to your attention that with any definition of political subdivisions is parishes and municipalities. In Section 1 of the Local Government Article, we have already provided that the "dissolution, merger, or consolidation of parishes would take place only by a two-thirds vote of the electors in the parish," so that the committee, in this Section 23, we are following the lines of what the Convention has already adopted. Let me reiterate again that Subsection (B) only applies when the legislature wants the political subdivisions to cooperate against their will, that there's still a door open for cooperation through the vote of the people. We thought that the vote of the people would be appropriate means by which this cooperation would take place. I'll yield to any questions, Mr. Chairman.

Question

Mr. O'Neill Well, Mr. Toomy, I can appreciate your explanation, but it seems to me that Section (A) says that they can do any of these things jointly or together. The people have no say-so, then, on what's done. Yet, if the legislature authorizes it and, say, the people want it, then it requires legislative approval and two-thirds the vote of the electors. I...you know, this seems preposterous to me. Two-thirds of the electors never even vote in election. The percentage is somewhere around sixty percent.

Mr. Toomy To answer your second question first, if you will read lines 7 and 8 on page 13, it says, "two-thirds of the electors in each of the political subdivision affected thereby, who vote, who vote in an election called for that purpose." Not two-thirds of the total electorate on the rolls, but only two-thirds of the people who vote in the election. The first question...I answer, it's been the feeling throughout of the Local Government Committee, that the local governing authority had a better pulse of the people within the area, and that if the governing authority was acceptable to such cooperation, that it would be more favorable to the people. If the legislature mandated such cooperation and it was against the will of the governing authority, then we would allow it to a vote of the people.

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Tate]. On page 12, delete lines 29 through 32, both inclusive, in their entirety including all floor amendments thereto (and there are none) and on page 13, delete lines 1 through 8, both inclusive, in their entirety including all floor amendments.

Now, Amendment No. 2. On page 13, between lines 8 and 9, delete Floor amendment No. 2 proposed by Delegate Burson and adopted by the Convention on October 2, 1973, (as a separate second amendment).

Explanation

Mr. Tate All right, Mr. Chairman, and fellow delegates, I don't rise with a great deal of confidence because it has not yet been explained to me what the purpose of (B) was. Nevertheless, looking at (B), the concept that "the legislature shall not require political subdivisions to exercise powers or perform functions jointly in cooperation with any other political subdivision," as an absolute blanket prohibition, it seems to me to be an unwise restriction on the power of the legislature to require governmental units performing the same functions such as gravity drainage districts, levee districts, etc., etc., to perform the same...to cooperate. I rise particularly, however, in opposition to the second sentence of the section which prohibits the consolidation of political subdivisions which...or the joint exercise, even the joint exercise of powers of functions by political subdivisions unless it's approved by a two-thirds vote of the electors in each of the subdivisions. Until it's been explained to me why we should freeze in all subdivisions, subdivisions are defined not only as towns, parishes...we all know what great things they are because we believe in home rule, etc. But, subdivisions are defined as special districts such as the garbage districts, the sewerage districts, the mosquito control districts. I just...until it's more adequately explained to me, it seems absolutely unwise to freeze into the constitution a restriction, an absolute governmental bar against the legislature either requiring cooperation or authorizing cooperation.

Questions

Mr. Lanier Judge Tate, if we delete Subsection (B), then, am I correct in saying that there would be no prohibition against the legislature of the State of Louisiana, say, consolidating the powers and functions of the parish of Jefferson with the parish of Orleans, to require that for all future

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Mr. Perez Yes, sir, and I would again suggest that we ought to limit this paragraph to the parishes and municipalities, and not to all these various districts. I'd be glad to support an amendment which would limit it to the local governmental subdivisions in order that the functions of the parishes and of the municipalities could not be merged without their consent.

Mr. Tate Mr. Perez, did I understand that you would accept an amendment to Section (B) that would limit it, "shall not require local governmental subdivisions," which are defined as parishes or municipalities?

Mr. Perez Yes, sir, I would.

Mr. Tate In the first and second sentence?

Mr. Perez Yes, sir, I would. If you'd be...If you will withdraw your amendment, I'd be glad to offer such an amendment.

Mr. Tate I'd be glad to withdraw my amendment if you'll do that.

Mr. Perez Fine.

[Amendments withdrawn.]

Amendments

Mr. Poynter Amendment No. 1 [by Mr. Gravel, et al.]. Page 12, line 30, immediately after the word "require" and before the word "to", delete the word...words "political subdivisions" and insert in lieu thereof "local governmental subdivisions".

Amendment No. 2. On page 12, line 32, immediately after the word "other" and before the word "nor", delete the word "political subdivision" and insert in lieu thereof the words "local governmental subdivision".

Amendment No. 3. This one was drafted with expediency in mind. On page 13, line 3, line 5, and line 7, knock out "political subdivisions" and insert in lieu thereof "local governmental subdivisions".

So, in effect, you are changing "political subdivisions" to local governmental subdivisions in five different places, line 12...page 12, line 30; page 12, line 32; on page 13, lines 3, 5, and 7.

Explanation

Mr. O'Neill Ladies and gentlemen of the convention, this takes care of the problems that Judge Tate has mentioned. I want you to just refer back quickly--I won't take very much time--to page 27, part 5, under definitions.

You will see there is a difference between the way local governmental subdivision "and political subdivision". There is a distinction made between these two. Rather than leave the words "political subdivision" in the committee proposal, we are attempting to change it to "local governmental subdivision" which means any parish or municipality. So it won't include hospital districts, mosquito abatement districts, or all these other little nit-picky things. This is a beginning in clearing up many of the problems that have arisen over Part (B) of this section.

There is no objection on the part of the committee, as you can see by the authors on the amendment, so I'd ask for your favorable adoption.

Questions

Mr. Conroy I don't know whether this should be directed to you or to the Chair, or what. But, does this also delete the Bursen amendment which I would assume would no longer be necessary, would it?

Mr. O'Neill No, sir.

Mr. Conroy It doesn't delete it? Is it necessary

anymore?

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Gravel]. On page 13, line 6, immediately after the word...after the words "approved by", and before the words "of", delete the word "two-thirds", insert in lieu thereof the words "a majority".

Explanation

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this is a very simple amendment that certainly is self-explanatory. This means that there, after the legislature, of course, has enacted laws, authorizing the consolidation of political subdivisions or the joint exercise of powers, that that law shall become effective when it is approved by a majority of the voters and not by a two-thirds vote. I think this is ample protection. This doesn't mean necessarily that I suppose the section, however, I don't want to mislead anybody, but I believe that it's fairer to say majority than two-thirds.

Questions

Mr. Lanier Mr. Gravel, would this mean, then that the legislature so authorized that the powers and functions of the parishes of Orleans and Jefferson could be joined by a majority vote in both places?

Mr. Gravel Well, they could by a majority vote, but they could do it by a two-thirds vote here. But I don't believe that's the intent of this at all.

Mr. Nunez Mr. Gravel, your amendment, would you say it would be compatible with Section 2 which says two-thirds vote for consolidating parishes, dissolving parishes, creating new areas, or changing parish boundaries which, evidently, under (B), very possibly was the powers and functions intermingled could mean the same thing. In it, you are getting away from the compatibility of Section 2, which is the same now in (B) of this section.

Mr. Gravel Well, perhaps so, but let me make sure that I make this clear.

If first of all, the legislature is acting in connection with this particular provision. Once the legislature has acted then a majority of the voters, as I understand it, should be the ones to decide whether or not that provision would go into effect. Otherwise, you would have a relatively small minority that could prevent the legislature's actions from taking effect.

Mr. Nunez Well, it might be wise to have a small majority preventing the action, if that action was so directed as to direct an urgent request, what have you, that they merge, consolidate their powers and functions. It might be wise to have two-thirds in there.

Mr. Gravel I don't agree that it would, Mr. Nunez. I think, first of all, that we keep in mind that we are indicating this on action by the legislature, which, I assume in most instances would be wise action that would be taken. Therefore, if you are going to have a veto by the people within the affected areas, it should be by a majority of those and not by two-thirds. It's just that simple. I imagine that some of you have a different view, but this is my view.

Mr. Nunez Well, would you...another question?

Mr. Gravel Yes, sir.

Mr. Nunez Would you recommend we go back and Change Section...

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Mr. Gravel Section 2, where...I mean...

Mr. Nunez Section 2 in the Local Government Article, Section 2....parishes....may consolidate parishes, dissolve parishes, etc. That's with two-thirds vote of the voters or electors in both parishes concur.

Mr. Gravel Well, I would think that Section 2 would be specific with respect to the things mentioned in Section 2, and probably are, of a higher degree than...the provisions we are talking about now.

Mr. Nunez Well, wouldn't you say my main concern is that Section 2, that this section would apply to a similar type of mergers in Section 2 and we should prohibit that. That's my main concern, wouldn't you agree?

Mr. Gravel I think there is a distinction...

Further Discussion

Mr. Toomy Mr. Chairman, fellow delegates, and particularly Mr. Gravel, I don't believe you read Section 1 as the convention adopted it. It reads, "the legislature...the legislature may establish and organize new parishes or merge parishes after two-thirds vote." We have the legislature involved in Section 1 just as we do in Section 23. I see no reason why we should change the vote. We already have the legislature authorization in Section 1. Your amendment would simply create a conflict between what we have already adopted and the way you are proposing to change this section.

I further submit, if you remember the last time I was up someone questioned me about the few people who vote at elections compared to the people on the rolls. Why I'd like to bring that up from my point of view. If you're going to consolidate parishes, or consolidate governmental subdivisions, think of the few number of people that might be involved in one election. This affects people more than anything you can imagine in the state, to change the parish lines, to consolidate parishes, change....consolidate powers and functions. I do not think that a two-thirds vote in each area is unreasonable. I feel that this is the heart of the home rule provision that you should establish parish lines, operate within cities and parishes. I see no reason why we should change the provision, I can only see problems arising from changing this from a two-thirds to a majority.

Question

Mr. Tobias Mr. Toomy, are you aware that Section 1, as far as changing parish boundary lines, etc., would control over this section of adopted? In other words, they are not in conflict with one another.

Mr. Toomy One says "the legislature may establish only after a two-thirds vote", and the other says, if you will read it, "the consolidation of local governmental subdivisions", and, as Mr. Gravel proposes, by only a majority vote. If you further understand what this section says, "by consolidating the powers and functions of local governmental subdivisions, you are, in essence, consolidating the

the way I read it "however, the legislature may enact laws authorizing the consolidation of political subdivisions, or joint exercise of powers or performing of such in political subdivisions." I read that to mean almost the same as consolidation of parish boundaries. I think we...I don't think we should be here making it easy to do that. I think if we don't understand it, like I don't, let's just eliminate it, but let's don't change that two-thirds vote to a simple majority vote.

Further Discussion

Mr. Alario Mr. Chairman and fellow delegates, I certainly want to rise to voice my opposition, also, to changing the vote required from two-thirds to a simple majority. Mr. Toomy certainly pointed out to you that in off elections like this, in these cases many people who don't go out to vote and consequently, a small amount of the people in a particular parish might be able to control that particular election. I think it would be dangerous for us to be in conflict with the provisions of Section 1 and 2 that we have already adopted. The judge pointed out that possibly you might have a problem in wanting to consolidate the mosquito districts in Jefferson and Orleans. I'd suggest to you that the people in Jefferson might be better off being bitten by the mosquitoes than having the bite put on them by the councilmen and mayor of the city of New Orleans.

Amendment

Mr. Poynter Mr. Burson sends up an amendment on page 13, between lines 8 and 9, delete the Floor Amendment No. 2 proposed by...at the convention earlier in the day.

Mr. Henry Third time's the charm. Explain it.

Explanation

Mr. Burson This is just a technical amendment. I think it's obvious when you change to the definition that includes only parishes and towns including schools....

[Adjournment.]

Announcements

[Adjournment to 9:00 o'clock a.m.]

Mr. Nunez Mr. Chairman and fellow delegates, I'm sitting down to understand the problem that they now have two-thirds to it. I think if you don't understand it, you don't like it, let's get it out of there. But let's don't...the powers and functions of local governmental subdivisions, you are, in essence, consolidating the

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Wednesday, October 3, 1973

ROLL CALL

[75 delegates present and a quorum.]

PRAYER

Mr. Burns Our Heavenly Father, we thank Thee for bringing us back to this convention for a new day. Thou, who has taught us to fly through the air like birds and travel under water like fish, we would ask that You would guide us down the straight road to January 4, not letting us turn to the right or left, but deliver on that day a constitution to the governor of the State of Louisiana that will not only meet with Thy approval, but with the approval of the people of the State of Louisiana. We ask all these things in Jesus's name. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Reconsideration

Mr. Poynter Reconsideration, Committee Proposal No. 17, by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, Section 24, thereof, dealing with assistance of local industry by political subdivisions, deep-water port commissions or deep-water port, harbor, and terminal districts. The question before the convention is the question of the reconsideration of said section, which failed to pass on yesterday.

[Motion to reconsider Section 23 adopted without objection.]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17, introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee.

A proposal making for general provisions for local and parochial government and levee districts and ports, the financing thereof and necessary provisions with respect thereto.

The status of the proposal is the convention has adopted the first 24 sections of the proposal, with the following exceptions being Sections 2, 4, 10, and 20, which the convention by amendment has deleted, and also Section 23, just reconsidered.

Mr. Henry Mr. Perez, do you want to go ahead and work on Section 23 again, or move on to 25?

Twenty-five?

Read Section 25, Mr. Clerk.

Reading of the Section

Mr. Poynter "Section 25. Appropriation to Political Subdivisions

Section 25. When the legislature appropriates funds to one or more political subdivisions and the legislature does not specify the purposes for which such funds shall be expended, or the amounts to be expended therefor, the expenditure of such funds shall be determined solely by the governing authority of the political subdivision or political subdivisions to which the funds are appropriated. The legislature may require a report concerning the allocation and expenditure of such funds.

Explanation

Mr. Burson Mr. Chairman, fellow delegates, this is a new section. There is no section like it in the present constitution. What it is designed to do quite simply is to prevent a situation such as has occurred with revenue-sharing, where the legislature made blanket allocations of funds to local governmental subdivisions, cities, or parishes,

and in many cases, the legislature delegation reserved the right to approve particular expenditures of those funds. What this section says is that if the legislature does not specify in the act of appropriation, the purpose for which money is to be spent, that is, if the legislature does not specify that the money is to be spent for roads or for some other purpose, then the specific expenditure of such funds shall be a matter to be determined solely by the governing authority of the political subdivision, or political subdivisions to which the funds have been appropriated. Of course, it goes without saying that the legislature, through the legislative auditor or any other means, should always be able to require reports concerning the expenditure of such funds, but the question met squarely by this section is whether or not an individual legislator, any parish, or municipality should be able to go back into the police jury meeting and say, "I want 'X' amount of dollars out of the revenue-sharing funds to be spent for five miles of blacktop road in Ward 6 of St. Landry Parish," which under the revenue sharing setup in many of the parishes, a legislator could do. It is an issue, really, as far as the local governmental subdivisions are concerned, of an intrusion of the state legislature into specific decision making at the local level. This is not to say at all--and I want that clearly understood--that if the legislature decides that it wants to make specific allocations for the purposes, say, of roads, that in that event, certainly the individual legislator should have a great deal to say about where these monies are to be expended. But, in the event of a general grant or general appropriation, that is not specified in the appropriation what the purpose of the money is, in that event the decision making as to the specific expenditures, it is the position of the committee, should be left to the local governmental body. Now, Senator Rayburn raised to me the question yesterday that the language on line 6 saying, "or the amounts to be expended therefor," really placed an impossible burden on the legislature since in many cases, for instance, in the expenditures of roads, it would be impossible to predict the exact amount that would be expended for a particular project until you really knew the final bid, so at his request, I have prepared an amendment which will be pending which would delete the words "or the amounts to be expended therefor," and will simply leave the language clearly stating that in the events that the legislature does not specify the purposes for which such funds are to be expended, then in that event, the expenditure of such funds shall be determined solely by the governing authority of the political subdivision. I'll answer any questions that anyone might have.

Amendment

Mr. Poynter Amendment No. 1, by Delegate Burson. On page 14, at the beginning of line 6, delete the words and punctuation "or the amounts to be expended therefor."

Explanation

Mr. Burson Mr. Chairman, fellow delegates, as I mentioned in the presentation of the section, this amendment was drafted when it was suggested to the committee that it would be impossible to ascertain the amounts expended for many projects with any specificity until after you had bids in to know what the project was going to cost, that it wasn't practical to have this requirement in the section. The committee has no objection to the deletion of these words, and if there is no other objection, we can go ahead and delete them and move on to a discussion of the rest of the section.

Questions

Mr. Duval Mr. Burson, I can see that people are pretty fascinated with this section, so I'm going to ask you a question about it. I'm sure the committee discussed the idea that perhaps if this

inclined to dedicate every fund to local government, I would have a...rather than to give them carte blanche, or did you all discuss that?

Mr. [Name] That was discussed, yes, it is

Mr. Duval What was the reason you did it this way? What did you decide?

Mr. Burson Well, as I mentioned in the original presentation, this is a problem which has really been put especially in focus by the revenue-sharing controversy, and this is what this is developed on

Mrs. Warren Mr. Burson, would this mean then that the legislature would not be able to specify what it was for?

Mr. Burson Yes, under this section

Mrs. Warren I mean taking out "or the amount to be expended therefor."

Mr. Burson No, ma'am. Taking these words out would eliminate the requirement of specifying what amount was to be expended for a particular purpose. Since in many cases, for instance, if you're going to build a road, you have no idea what the road's going to cost until after you've gone through the process of taking bids on it, and that's why I agreed and the committee has agreed to take these words out of there, since it's not a requirement that could be practically dealt with.

Mr. Poynter Amendments sent up by Delegate Gravel. Amendment No. 1. On page 14, delete lines 2 through 11, both inclusive, in their entirety.

Mr. Gravel Mr. Chairman, ladies and gentlemen of the convention, this amendment seeks, as indicated, to delete this entire section. There's no reason that I can possibly conceive of why this kind of a...kind of prohibition or restraint or direction, whatever you want to call it...on the legislature should be contained in the constitution. The language is bad; the purpose may very well be laudible that for which this section was drafted, but it's going to be practically impossible in my judgment for the legislature to comply with the directives here. For example, the section says that "unless the legislature specifies the purposes for which such funds shall be expended." Now, there are very...there are many, many instances where it would be difficult for the legislature to specify in detail or in the manner, I think suggested by this language, the exact purposes for which the funds are to be expended. It's going to require a whole lot of additional, technical work done...to be done by the legislature than is presently done when appropriations are made. In addition to that, the section says that, "unless there is contrary, specific provision by the legislature, that the disposition of the funds shall be determined solely by the governing authority of the political subdivision." This would prohibit the legislature from requiring disposition of government funds, state funds, in connection with and under the supervision and control of designated agencies such as the Department of Highways or the Department of Welfare or some other department, that must and should in many, many instances act in conjunction with local and parochial government, and in many instances, state agencies and direct the expenditure of such funds. I think if you'll give care...going to cause insurmountable problems to require

local governing authority. One underlying fallacy, both political and governmental with respect to this provision, it's a complete disassociation or...possible from the legislative process, and most importantly, this section says to me, as I suggest it very well may say to you, that you legislators are charged with the obligation and the responsibility of levying taxes, and you've got to take the heat and the burden and the brunt of your actions in passing laws that levy taxes that raise revenues and that raise monies that are going to be appropriated, and when you've raised that money, and incurred to some extent, perhaps, the wrath or the dislike of the populous, then you let us spend that money the way we want to spend it, and you...the legislature, should not exercise direction, supervision and control, in whatever way you see fit with respect to the disposition of funds that you've raised for use in the local communities and in other areas throughout this state, and I suggest to you that this is fundamentally wrong, that this provision should not be in the constitution. It's an effort in the constitution to take care of a few situations that exist in some areas where, as a consequence of revenue sharing, the legislature has seen fit to continue to exercise some control over the disposition of the funds that have been allocated under a revenue-sharing program. I urge you to defeat this entire section that you support the amendment, and I'll yield to any questions.

Questions

Mr. Rayburn The last sentence. In the beginning they say they don't want us to have anything to do with how they spend the money unless it's provided amounts and expenditures, and so forth, which has been deleted, but they say that the legislature may require a report concerning the allocation and expenditures of such funds. I wonder what we'd do with that report after we got it.

Mr. Gravel It's an absolutely meaningless provision, in my judgment, Senator Rayburn. There's nothing in here; there's no recourse that the legislature would have with the respect to the expenditure of these funds, and this report, of course, as you suggest, would have no value at all.

Mr. Champagne Mr. Gravel, it says, "when the legislature appropriates funds...ify," don't you think that...open the road to the legis...them more than they tell them...have to do, and everything they

Mr. Gravel It very well could in some instances, but would require, and maybe the legislature would then start doing a whole lot more than they're doing in the past. I think that's correct.

Mr. [Name]

Mr. [Name] I think it's...view, also.

Mr. [Name] I think it's...the legislature

Mr. [Name] I think it's...the legislature

Mr. [Name] I think it's...the legislature

Mr. [Name] I think it's...the legislature

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Mr. Gravel Revenue-sharing funds, which are just a two year old concept, are generally allocated by the legislature to the local governing subdivisions, and in some instances, at least in the last two instances, there have been a list of some thirteen or fourteen different areas in which these funds could be spent, but I don't even think that that would be contemplated. Mrs. Warren, by this section, because I don't think there that the kind of specifics contemplated by this section are really spelled out in the revenue-sharing acts that have been passed by the legislature.

Mrs. Warren So, in this, if you don't delete this, it would mean that you would never be able to allocate funds for specifics?

Mr. Gravel Yes...

Mrs. Warren ...That you wanted to fund something specifically, you couldn't do it? This is what I'm trying to find out.

Mr. Gravel Well, now, I think this could be done under this section. Under the revenue-sharing bills, the last two that were passed, and I think there have only been two, the legislature has said that these...that the excess funds in revenue-sharing, after certain specific payments were made to certain tax recipient bodies, that excess funds could only be spent for certain purposes, but they weren't specific purposes. There were a list of some eighteen...thirteen to eighteen purposes as I recall it for which such funds could be used. I don't think...

Mrs. Warren Thank you, but I would like for you to give me a list of those eighteen things--not right now, but I'd like to see them.

Mr. Roy Mr. Gravel, can you tell me, as a practical matter, from line 7 on, how the expenditure of these monies, determined solely by governing political subdivisions, could be accomplished, that is, as I understand the definition of "political subdivision" you can have two water shed districts from two areas, or two water shed districts, and how would...what's the mechanics for them agreeing? Would it take two-thirds on each side? Would fifty percent of them have to agree? Just how would it work?

Mr. Gravel Well, I think under this section, just the allocation is made, and there the constitution tops, and there are no criteria or guidelines or safeguards with respect to the expenditures by the local governing subdivisions.

Further Discussion

Mr. DeBlieu Mr. Chairman and ladies and gentlemen of the convention, I want to support this amendment, and make my remarks very brief on it. What I think that this amendment was supposed to correct, was individual legislators being able to dictate to their local governing bodies how to spend revenue-sharing funds or similar funds. This particular amendment is not going to correct that situation. What it's going to do: it's going to result in the legislature taking on a lot of these functions, centralize the government, and you will have a whole lot less funds going to your local governing bodies as a result of this amendment, rather than an increase upon and more liberality in the spending of those funds. I think this is a good amendment, and I certainly think we ought to take this particular provision out of the constitution because it's going to hamper our local government, rather than help them as they are intended to do on this particular amendment. I ask you to support the amendment.

Further Discussion

Mr. Flory Mr. Chairman and delegates, I rise in support of the amendment, and briefly, to tell you

my reasons for that, the other day Mr. Womack stated, and I have no reason to disagree with his figures, to say that the state gave to the local government monies to the figure of \$648,000,000.00 a year. Now, this is what we are talking about in dollars, raised by the state. I suggest to you that if you read this section carefully, what you're saying in this amendment is: all funds appropriated by the state to the local political subdivisions of this state could be taken out from under the public bidding statutes of the state. Now, mind you, you're talking about \$648,000,000.00 which are now subject to Title 38, Section 22.11, under the public bidding statutes of Louisiana. Adopt this amendment, and you take those funds from a public bidding statute now on the statute books in Louisiana. For example, Act 10 says--and it appropriates \$10,000,000.00 a year to the various municipalities and police jury for the construction of roads--there is a further stipulation in that act: it says that those contracts...those projects have to be let by contract. I suggest to you under this they would not have to be let by contract. Further than that, each year the legislature appropriates some \$20,000 to each parish for off-system roads. Now, you imagine with this provision in the constitution, what would happen in those police juries that have the ward system in effect, not having to go the public bidding route in the purchase of materials or the construction of off-system roads. I support the amendment, and ask that you adopt Mr. Gravel's amendment to delete this entire section as being unnecessary, and would really complicate the work of the legislature and require them to deal far more in specifics than they ever have in the past. When you get down to it really, the \$648,000,000, very little of it is earmarked by the legislature for use by local governments. I'd be happy to answer any questions, Mr. Chairman.

Questions

Mr. Staggs Gordon, would you further explain...I think I heard you say that this money that was sent back to the cities and/or the parish governing authorities, would not be subject to the Public Bidding Act. I thought any expenditure for repairs up to a thousand dollars or purchases...under twenty-five hundred dollars were not subject to the Public Bidding Act, but everything over that was, even on the local level.

Mr. Flory That is the law today, but if you enact this in the constitution, and you give total discretion to the local governing authority to use it as they see fit, then I think that repeals the public bidding statute insofar as that monies are concerned.

Mr. Staggs How can an allocation of funds to a local government agency override the public bidding law?

Mr. Flory I think this is constitutional and that's statutory.

Mr. Staggs Would you say in here the language, the line or the words in here that you say does away with the public bidding statute as to these monies?

Mr. Flory As to these monies, that's correct.

Mr. Staggs Where in here? What line?

Mr. Flory Well, beginning on line 6, "the expenditure of such funds shall be determined solely by the governing authority of the political subdivision, or political subdivisions to which the funds are appropriated."

Mr. Staggs Well, Mr. Flory, doesn't that mean that the use of the funds is determined solely by them, not the method by which they go through the process of spending it?

Mr. Flory As I read it, it means both the purpose

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for a judge to get active in politics. Well, I made one time--and I'm fixing to close--

They invited me to the Judicial Council. I don't know whether you all know what the Judicial Council is, and I'm a member, ex officio, because I'm chairman of the Finance Committee, and those judges like to have anybody around them where expenditures originate. I know that's the reason they asked me to come. Well, they had a big debate going on--I'll tell you, they had a fellow, McCaleb, I believe, and he spoke before me, and he painted the prettiest picture that I've ever seen, or ever heard, or ever listened to about why a judge should be appointed and not elected, and once he got it, he ought to be able to keep it. Well, I got up there and I said, "I hate to disagree with that fellow," I called him a fellow; well, that irritated him to start with. A member of the big, high court, you know, but I forgot his name; I didn't know what else to call him. So, I said, "I want to disagree with him wholeheartedly." I said, "Since I've been in the legislature, if I ever had a real serious political question, and you just said that judges don't know nothing about politics, if I ever had a serious political question, that I couldn't decide, I'd go at that time, when the Chief Justice was Judge Barnett, I believe." I said if I couldn't find Judge Barnett to help me out with it, I'd hurt him. I'm president, and I'll guarantee you, they're both well qualified on any part of politics you want to discuss.

Further Discussion

Mr. Atceff. Mr. Chairman, delegates, I wouldn't speak if it were not necessary, because I am ill and hardly able to be here.

I regret to disagree with the distinguished Senator. But, I--and I've known him for many, many years--I'm afraid he has misinterpreted Section 25. Section 25 is an excellent section, very excellent, one of the most important that I can advise that I agree that it needs strengthening; it needs clarification. But it does not place the limitations upon the power of the legislator that the Senator states. It simply tries to prevent one thing and one thing alone. I wish it would do it more specifically. It attempts to keep the legislators, in their individual capacities, from dictating to the local governing bodies. That is its purpose. The purpose is a good one as long as the legislature acts as a legislature, which is the way it should act. Then it can impose whatever restrictions it may care to impose upon the local governing bodies.

I urge you to reject the amendment and to adopt Section 25. I hope the committee will clarify its purpose. Thank you.

Further Discussion

Mr. Lowe. Mr. Chairman, fellow delegates, I arose to agree with Mr. Gravel to delete this section. But, I understand from the Chairman that they have agreed to withdraw the section and agree with Mr. Gravel. So, in that case, I have nothing further to say to you.

Further Discussion

Mr. Perez. Mr. Chairman and ladies and gentlemen of the convention, first I want to briefly explain to you the purpose, the reason that the committee had included this provision.

It has become quite a problem in some areas of the state where legislators cannot get together and agree, particularly on revenue-sharing, and as a result, in some cases the revenues are not even expended which are allocated to local governments. It did appear to the committee to be a problem and that's the reason the provision was included.

But in view of the fact that it appears that we might have a long and extended discussion over this matter, and that it does affect only certain areas of the state and is not universal in the

problems involved, I've canvassed a majority of the members of this committee. They have agreed to go along with the Gravel amendment and to delete the provision.

[Previous Question ordered. Record vote ordered. Amendment adopted. 84-22. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter. "Section 26. Uniform Procedure for Calling, Conducting, and Canvassing the Returns of Certain Special Elections

Section 26. When any election is required to be held in any political subdivision pursuant to the provisions of this constitution which require submission to the electors of any proposition or question, such as the change of parish lines, change of location of parish seat, levying taxes, issuance of bonds or incurring of other debt obligations, the assumption of debt, referendum, recall, or the adoption of a home rule charter, the election shall be called, conducted, and the returns thereof canvassed, in accordance with the law pertaining to the election...pertaining to elections for incurring bonded indebtedness and special taxes relative to local finance, as the same now exist, may hereafter be amended, or as may be otherwise provided by the legislature."

Explanation

Mr. Perez. Mr. Chairman and ladies and gentlemen of the convention, the purpose of this section is to provide the means whereby the various elections which are called for in both the part of the Local Government Article which we have already covered, plus the provisions on finance, can be carried out by election.

Chapter 4 of Title 39 is the provision dealing with bonded indebtedness and special taxes and all of the mechanics involved for the calling of elections for propositions, yes or no. Therefore, the committee felt that in order to be able to carry out all of the various provisions, such as elections to change the location of a parish seat, the levying of a tax, the change of parish lines, the issuance of bonds, incurring of debt, assumption of debt, referendum, recall, and adoption of a home rule charter that the provisions provided for in this particular part of the revised statutes would be applicable and should be used for the calling of the elections.

The last part of the sentence, rather the last part of the section, says also, "as the same now exists or may hereafter be amended or as may be otherwise provided by the legislature" for the purpose, for that particular language, that if the legislature, in its wisdom, decides at a later time that it wants to make special provisions for any of these purposes, they would be able to pass whatever laws were necessary. But the main purpose of this section is to give an automatic means whereby the vehicle through which all of these various elections could be called and the elections held and the results canvassed.

I yield to any questions.

Questions

Mr. Bergeron. Mr. Perez, I'm seeking some information. I'm looking at line 17, such as you just partly explained. It says "such as the change of parish lines, change of location of parish seat, levy of taxes," etc. If you don't specifically name these in the constitution, can the legislature call...can an election be called anyway?

Mr. Perez. Yes, there is an amendment coming which will shorten the section. If you would read it without those words, which would say, "when any election is required to be held in any political subdivision pursuant to the provisions of this constitution which requires submission to the electors of any propositional question, the election

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qualifications to vote in such elections, and that we are talking here about a uniform procedure to be followed and not substantive rights. I move the adoption of the amendment.

Question

Mr. Bergeron Mr. Gravel, if your amendment was adopted, looking at line 24, "as the same now exists or may hereafter be amended or as may be otherwise provided by the legislature," would this line be needed, as you see?

Mr. Gravel Well, I think this simply says, as Mr. Perez has indicated, that the present law and the present procedures are being maintained unless and until, either by an election code or by some legislative act, other procedures are adopted.

I think...transitionally I think it might be needed. I don't think untilately it would be.

Further Discussion

Mr. Perez No objection to the adoption of the amendment.

[Previous question ordered. Amendment adopted without objection. Previous question ordered in the Section. Section passed: 105-1. Motion to reconsider tabled. Motion to waive reading of Section 17 adopted without objection.]

Explanation

Mr. Keen Mr. Chairman and fellow delegates, Section 27 is a general provision dealing with the acquisition of property by political subdivisions for any public purpose. The language as presently reads provides that it's subject to such restrictions as the legislature may impose under public law. Mr. Gravel has inquired as to whether or not I would have any objection to making that read "subject to and not inconsistent with this constitution, political subdivisions may acquire property for any public purpose, including, but not limited to: . . ."

As I am personally concerned, I would have no objection to an amendment which would provide that language. The purpose of the section is merely to make it clear that the political subdivisions do have the right, without the necessity of further legislation, to acquire property by purchase, and require certain steps to be taken in connection with expropriation, do have the right to acquire property for their purposes, either by purchase, donation, expropriation, or exchange. It merely clarifies their right to do so and, with the amendment, makes it clear, for example, that the amendment would permit them to do so without doing violence to other provisions of the constitution.

I will yield to any question.

Questions

Mr. Grave: You may have misunderstood the request that I made of you. I didn't mean that the amendment that I would propose would delete "subject to such restrictions as the legislature may provide by general law." That would be retained, but we would add the other language to it.

Mr. Kean Yes, that's perfectly all right with me. I have no objection to it.

Mr. Jenkins Mr. Kean, political subdivisions as defined by the committee proposal as "parishes, municipalities and special districts." I assume including fire protection districts, water districts, lighting districts, sewerage districts, etc., this would give to those districts, wouldn't it, expropriation authority for any public purpose, not just their public purposes, but for any public purpose...?

Mr. Keane: Well, I think the law would mean...would interpret that to mean, Mr. Jenkins, that the public purpose for which they could expropriate would have to be related to the purpose for which the district was created. You couldn't have a mosquito control district which would seek to acquire property for a fire station, or a fire station which would seek to acquire property for mosquito control purposes. I think that they would have to be able to acquire property for the purpose for which that particular district was created. I don't think you'd...give them greater authority than that.

Mr. Jenkins So, the intent, really, then, is to allow them to expropriate for public purposes within the scope of their authority. Is that the intent?

Mr. Kean I would say that the intent is to acquire it for any public purpose for which that particular agency has been created.

Amendment

Mr. Poynter [Amended by Mr. Poynter.] On page 14, line 28, after "Section 27." and before the words "to such", delete the word "Subject" and insert in lieu thereof the following:

"Subject to and not inconsistent with any provision of this constitution and subject".

Explanation

Mr. Gravel All that this amendment would do, would be to make sure that no political subdivision could exercise the right of expropriation in conflict with any provision of this constitution that was already adopted. That's all it does. It adds that concept to the section as recommended by the committee.

I yield to a question.

Questions

Mr. Lanier Mr. Gravel, would this amendment really be necessary in view of the fact that in the first section of the Bill of Rights we say that "all of the rights granted herein shall be maintained inalienable by the state and shall be preserved inviolate by the state"?

Mr. Gravel I think since this is a specific grant under rather general language, that I believe the amendment is necessary. Now it may very well be that that amendment, which is similar to an amendment that I submitted, would be more easily accommodated in some other way without repeating it in every section. But I think that's something we'd have to determine later on, and through the Style and Drafting Committee. But I do think that the amendment is a sound one, and I think that it is a political subdivisions the right to expropriate for any public purpose, specifically, and only subject to the restriction that the legislature may provide otherwise. I think that's the way that it is essential that we put this in now.

Mr. Lanier If we follow your approach to this section and other sections, would it not be true that every time we have some type of grant of authority to anything, say like in Education and Welfare, or Revenue, Finance and Taxation, or Natural Resources, that we'd have to tack this language onto everything?

Mr. Gravel: Not necessarily, but in some instances I think, where we have clearly spelled out our position already, that it may be necessary. I think that that's one of the problems that we...we're going to be confronted with because of the fact that different committees are working on different articles.

I would agree, Mr. Lanier, that the whole concept can be, perhaps, accommodated in some other

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were related to the authority granted to that agency. Where we come in and try to implant into the constitution some such restriction as this, it simply raises another question in my mind, as to what you would have to show in order to expropriate or require property for a particular purpose by a particular agency. I think the section as it is now drafted, adequately protects all of the rights of individuals and otherwise, and that we ought to reject this amendment and go ahead and adopt the section without further delay.

Questions

Mr. Jenkins Gordon, I certainly would agree that up till now, school boards could only expropriate for school purposes, for example. But up till now, we haven't had Section 27, have we, which says "political subdivisions may acquire property for any public purpose"? "Any public purpose."

Mr. Kean I would take that to mean any public purpose related to the operation of that particular agency.

Mrs. Zervigon Mr. Kean, let me help clear this up in my mind. Aren't there cases where three or more districts get together and cooperate on a project, a street lighting district, a paving district and the sewerage district may get together on the construction of a roadway?

Mr. Kean Yes.

Mrs. Zervigon Do you see that this would cause problems in who acquired the property in order to further that project?

Mr. Kean Well, that's the point I tried to make a moment ago with respect to the sanitary sewerage facility, where a police jury would have authority to build a line and to require rights-of-way for that line. On the other hand, you can create special districts for that purpose, and the question then coming up, as to who had within what authority to acquire the rights-of-way. You would simply delay the project in the process.

Mrs. Zervigon How would that be defined under this amendment, do you have any idea?

Mr. Kean Well, I would have no objection to saying "require property for their public purposes," if that would clarify the thing in the minds of all the delegates.

Mr. Avant Mr. Kean, you just said something that disturbs me and something came to my mind. Let's suppose the school board acquired a tract of land in the middle of a bog hole, and they decided they wanted to build a school there. Now, as the situation now stands, if they wanted to drain that and they had to get a right-of-way for drainage, the council would have to cooperate with them and say, "Well, we think that you've got to build a school in the bog hole, so we will go along with you. We will expropriate a drainage right-of-way, so you can build it." You don't want that situation to prevail, as I understand it. You want the school board to be able to buy this bog hole and then expropriate other property to drain it, so that they can build a school there--without having to get the cooperation of the people who have those powers. Is that correct?

Mr. Kean I would assume that at the present time, Mr. Avant, if the school board felt, based upon their studies and the needs of the community, that they needed a school in this particular site and they had to have some off-site drainage for it, that they would have a right to acquire the off-site drainage.

Mr. Avant Well, I misinterpreted your remarks there.

Mrs. Warren I've got two of them; I'll try and make it quick. You have included school boards in Section 27?

Mr. Kean Well, the plan as I understand it, Mrs. Warren, now is to include school boards within the definition of the words "political subdivisions," and then not...and exclude school boards wherever it's necessary to do so.

Mrs. Warren Well, in a situation like this, school board has property and this school is going to be torn down and then put something else there, then the school board has the right to expropriate property to build another school within the same section. You see, I mean this thing has gone pretty wide; and I haven't gotten up to that Mike, but I got something in my mind that is probably going to be going on in my section that the people are very disturbed about right now, such as the Chicago plan.

Mr. Kean Well, under the present law as I appreciate it, if there was a school that had to be torn down, the school board felt...

Mr. Henry You've exceeded your time, Mr. Kean.

[The committee on the proposed amendment rejected: 4-10, Motion to amend was tabled. The committee on the proposed amendment rejected: 4-10, Motion to amend was tabled.]

Reading of the Section

Mr. Foynter Section 28. Servitudes-of-Way; Acquisition by Prescription.

Section 28. The public represented by the various political subdivisions may acquire servitudes-of-way by prescription in the manner prescribed by law.

Explanation

Mr. Kean Mr. Chairman, fellow delegates, this is what carries forward the provisions now contained in Article XIV, Section 16 of the present constitution. Those provisions were placed in the existing constitution, and I think it is necessary to carry them forward because under certain circumstances by legislative act, municipalities and parishes where they maintain a road for three years, acquire by reason of that maintenance a servitude-of-way. Under the circumstances, if we did not have some support in the constitution for the acquisition of that servitude by way of three years' maintenance as provided for by the legislature, there could be a question raised as to whether or not this would be in conflict with other provisions of the constitution. I think it's necessary that we continue the present policy of acquiring servitudes-of-way by reason of three years of maintenance, is based on acquiescence by the property owner, and for that reason, if we are going to continue that legislative policy--which I think is a good one--then we need to have the benefit of Section 28 to support it. For that reason, I urge you to adopt the section as written.

Questions

Mr. Bergeron Mr. Kean, I had spoken to you earlier about this section. The section is worded for word as it stands in our present constitution except "political subdivisions" takes the place of "parishes." Now, talking about political subdivisions, are we speaking about things other than municipalities and parishes?

Mr. Kean The committee would if in the broader sense, Mr. Bergeron, I have no objection to making it read, "local governmental subdivisions," which would conform to what the present situation is. We used it in the broader sense with the idea that there might be some other instances where the legislature might want to prescribe the means by which

you would acquire servitude.

Mr. Kean Drainages, right-of-way by virtue of maintenance, things of that kind.

Mr. Bergeron O.K. I was just questioning. Thank

Mr. Singletary Mr. Kean, does the political subdivision acquire the servitude or does this state? The way it's worded it says "The public by way of the..."

Mr. Kean Under the present law, the political subdivisions--for example--if the parish maintains a road for three years, the parish then acquires that servitude. If the municipality maintains a road for three years, then the municipality acquires it, the state does not.

Further Discussion

Mr. Roy Mr. Chairman,adies and gentlemen, the convention, if you will look at that particular section that Mr. Kean referred to in Article XIV, Section 16, you will see that it says "various parishes, it is restricted." The idea of prescription and for you nonlawyers in here what that means is, is that if a political...if a public body...a parish police jury or a governing body takes care of your property and puts a road on it and works it for a certain number of years, then the parish has a right-of-way over your property, irrespective of whether you agree to it or not. That is, by your not telling them to stay off of it, you tacitly consented to it, and now, that's all right with me. I don't mind that, because a lot of the people in the parish had let the police jury work some old road that was on their property, and the public started using it and they never grieved about it, then later after the police jury worked it for many years, they came in and told the police jury they wanted to charge people for driving on it and stuff like that. I agree with that. But, this particular Section 28, does not limit it to local governmental subdivisions, as defined in that particular definition section; it now says "political subdivisions." Mr. Kean...oh...well, you would have no...if there is no objection to making it political..."local governmental subdivisions," I'm for the section. But, I'm against a mosquito control unit being able to prescribe your pro...

Amendment

Mr. Poynter Amendment sent up by Delegate

on 2nd Planchar: Amendment No. 1. On page 15 at the end of line delete the partial word "po-" and at the beginning of line 4 delete the remainder of the word "litical" and insert in lieu thereof the words "local governmental".

Explanation

Mr. Newton I don't think there are distribution agreeable to the amendment. This would provide the necessary authority for the police juries and, also, the cities and now...to prescribe for roads under conditions set down by the legislature, which presently are that they have worked the roads for a...to have this authorization in there. I understand,

[Amendment adopted without objection.]

State, School Districts, and Political Subdivisions Section 29. Prescrip-tor shall not run against the state, school districts, or against any politi-

wise provided in this constitution or general law."

Explanation

Mr. Kean Mr. Chairman, fellow delegates, this provision is presently in Article XII, Section 16, which reads "Prescription shall not run against the state in any civil matter, unless otherwise authorized in this constitution or expressly by general law." It may well be that this is a section that ought to be in some kind of a general provision of this constitution. But, because the committee was not certain that the matter was being considered by any other committee, we felt it did have a bearing upon local governmental and other political subdivisions for this reason. The present provisions of Article XII, Section 16 relating, providing that "Prescription shall not run against the state" has been interpreted to mean only the state, and therefore, the prescription in other instances was interpreted to run in civil matters against the school boards, against school districts and political subdivisions. It was the view of the committee that these agencies of the state ought to enjoy the same protection against prescription, as does the state in civil matters. Under the circumstances, the committee broadened-as interpreted-Article XII, Section 16 to read as Section 29 now does, and would provide that "Prescription shall not run against the state, school districts, or against any political subdivision in any civil matter, unless otherwise provided in this constitution or expressly by general law." So, it would protect the prescription...provide against prescription running against the state or its political subdivisions, although, it could be provided to the contrary in the constitution, or by general law. Under the circumstances, I submit this section does reserve a substantial right, insofar, as these agencies are concerned presently in favor of the state. I ask your adoption of the section. I'll be glad to answer any questions.

Questions

Mr. Lennox I'm curious to know how I can get...satisfaction of a contract with the state, or any of these political subdivisions. Now I could ever bring to a conclusion, a contract. For example, if I had a contract to supply materials, and I completed the contract and all of the necessary documents were executed--the state could a hundred years later bring suit against me for nonperform-

Mr. Newton well, I can tell you that...could run against...who could be since everybody, you know, you can...well, I can tell you that...

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inssofar as the state or its political subdivisions are concerned. For example, suppose there was a right-of-way acquired by a political subdivision and someone encroached upon that right-of-way for a certain period of time. If the state had acquired the right-of-way, that individual couldn't acquire any rights with respect to it because of the present prohibition in Article XIX, Section 16. If the local governmental or political subdivision had acquired the right-of-way, that individual could--under the present status of the law--prescribe against that political subdivision, insofar as encroachment is concerned. This would simply put both the state and the political subdivisions in the same posture.

Mr. Arnette Mr. Kean, this is just a quick question. I realize this section is just about like the old constitution. But under this section, say the state had a contract action against someone for a contract they made, say in 1900. They could sue today on that contract action under this provision?

Mr. Kean I don't think they could, no. Not if the contract had been completed and accepted by the party to that contract.

Mr. Arnette In other words, what I want to know is, what is "Prescription shall not run against the state" mean? Does that mean a contract action would prescribe or it would not prescribe, or a tort action would prescribe or would not prescribe?

Mr. Kean The normal...the jurisprudence under this section--and we kind of get Mr. Pugh in the middle here--as related to questions where land was involved, for example, or the right-of-way...

Mr. Arnette In other words, you really meant to say, "acquisitive prescription shall not run against the state."

Mr. Kean That's correct. We are talking about acquisitive prescription, that's what we are talking about, or a prescription acquiesce, or whatever you call it.

Mr. Arnette Do you intend for...

Mr. Henry The gentleman has exceeded his time.
Mr. Arnette.

Mr. Arnette Mr. Kean, so in other words, you don't intend, or you do intend for liberty of [unintelligible] prescription to run against the state. Is that not true, or what was the committee's intent, that's what I'm trying to find out.

Mr. Kean We were talking about, based on the jurisprudence that dealt with this article before, Mr. Arnette, prescription acquiesce causam--liberated prescription, acquisitive prescription. Thank you.

Mr. Arnette Acquisitive prescription. Don't you think maybe we better clarify that with a little technical amendment and put liberative in there?

Mr. Kean I would have no objection to it.

Mr. Pugh Mr. Kean, are you now familiar with such other committee proposals as they might otherwise provide? Do you know how effective this may be to those?

Mr. Kean I do not, Mr. Pugh; this language was taken from the present constitutional provision.

Mr. Pugh May I ask you one other thing, please, sir? Did you all intend to protect the party against whom an action may be brought by the state, growing out of the same set of facts in which prescription would not run, so that in compensation, that party, also, wouldn't have his rights...relative to prescription having run on him. That is

to say, that if the state sues John Smith for ten thousand dollars and John Smith has a clear offset against the state for five thousand dollars, except that prescription as run against him--but not against the state--what if anything, do you propose to do for that man in this section?

Mr. Kean Well, as I understand the interpretation of this section, as it was interpreted by jurisprudence heretofore, Mr. Pugh, it was talking about the interruption of prescription acquiesce causam--or the other way around--prescription liberum de causam and it was not involved with the question of contract rights, or the other prescription that might be involved with individual rights.

Mr. Pugh If the technical amendment about acquisitive prescription is placed there, to limit it to that, I would wholeheartedly agree with you.

Mr. Kean I have no objection to that technical amendment.

Mr. Pugh Thank you.

Mr. Jesion Mr. Kean, it's your impression that particular section, that it does not apply to tort actions or to workmen's compensation actions?

Mr. Kean That's correct, yes, sir.

Mr. Vesich But, it doesn't say that; you admit that?

Mr. Kean Well, that's been the interpretation of it under the existing constitution. As I pointed out before, I have no objection to a technical amendment which would place the present interpretative language into the constitution.

Mr. Flory Mr. Kean, by the terminology in that last portion "unless otherwise provided in this constitution or expressly by general law," are you prohibiting the legislature there from waiving prescription in particular cases with extenuating circumstances?

Mr. Kean Yes, sir, I would say they did it where they can expressly do it by general law; you're recognizing their right to do so. I think you would, also be governed by the--I don't recall what we did with respect to governmental immunity--but I think there is some provision or was that had to do with the right of the legislature to waive prescription under those circumstances.

Mr. Flory Well, as I appreciate the waiving of prescription is done generally where you authorize suit against a state, you waive prescription and that's by special act; it wouldn't be general law, that's the reason I pose the question.

Mr. Kean Heretofore, it had been provided in the constitution that the legislature could waive prescription, insofar as the tort actions were concerned. I don't recall at the moment how we treated with that question in the legislative section, when we dealt with governmental immunity.

Mr. Flory I don't believe we dealt with it at all, if my memory serves me correct, either in the Judicial or the Legislative Article.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Arnette]. On Page 15, line 8, immediately after the number and punctuation "29," and before the word "shall" delete the word "Prescription" and insert with initial cap--in lieu the words "Acquisitive prescription".

Explanation

Mr. Arnette Ladies and gentlemen, this is just a technical amendment. I just talked to Mr. Kean, and he said this is what the committee's intent was

all we are doing is just saying it, so there won't be any doubt about it. I urge the adoption of the amendment.

Mr. O'Neill Greg, for the benefit of the non-law delegates, why don't you explain what that

Mr. Arnette Well, what this means is there are two different kinds of prescription--acquisitive and liberative. Acquisitive prescription is when someone acquires a right through the lapse of time. In other words, say if somebody is sitting on the state lands in thirty years without a title, they get that land, well, this would prevent that. Liberative prescription would run against a state. In other words, lose a right through the lapse of time--say you have a contract with the state and you default on that contract, well, they would sue you ten years to sue you. Under this provision, after that ten years is over, they wouldn't have the right to sue you anymore. That is all this means, that the state cannot lose any of its lands or anything like this, but it would lose its right to sue in certain instances. I don't know if I can explain it any better than that.

Mr. Arnette The way I understand it, the Supreme Court has interpreted prescription in this particular article to mean acquisitive prescription. At least, that's according to the West's Annotations.

Further Discussion

Mr. Conroy At this point, I'm not in a position to disagree with what Mr. Arnette said; I simply don't know, I'm trying to find out right now, several of us are scrambling around trying to find what the present state of the law is on prescription. I have some hesitancy about limiting this. I had thought that the way the committee had worded this section with the provision in there that the legislature could affect this whole proposition by whatever general laws were appropriate was the best way to handle it. I am concerned about inserting into this any prohibitions against the running of prescription, because I think there are certain areas in which prescription can and should not run against the state. My present position is one of concern about fooling with what the committee has done here. I would recommend rejection of this amendment. There may be others that will come along that will clarify some of this, but I would reject this one at this time.

Closing

Mr. Arnette I don't see any point in closing, I think I made my point. I would just like to say I don't know of any case that liberative prescription has not been...had to run against the state under the present law. I think we ought to make it very clear that the state does not have a contract action for three hundred years, or a tort action for three hundred years. I think that these kind of actions ought to prescribe against the state. The state only needs protection against liberative prescription anyway. Whether this is or isn't the present law, it's the way it ought to be.

through 11, both inclusive in their entirety...and Mr. Newton floor Amendment No. 1, proposed by Mr. Arnette and just adopted, and insert in lieu thereof of the following:

"Section 29. Prescription Against State
Section 29. Prescription shall not run against the state in any civil matter, unless otherwise provided by law."

Explanation

Mr. Newton This is the language of the 1921 Constitution, which we've been living with for quite some time and I don't know that we've had any horrible problems with it. This is an attempt to do two things: It's an attempt to do away with the Arnette amendment and it's an attempt to clarify the situation that Mr. Flory was concerned with requiring general laws in order to waive prescription against the state in workmen's compensation and tort suits. Now, I got a little upset when the words "acquisitive prescription" was added here, because I didn't know what that did to the law, and I'm still not real sure what that does to the law, but...let me just talk about a couple of things that I think it does, and I think it creates some serious problems. In our law a servitude is prescriptible if it's not used in ten years, and the right to search for minerals is a servitude. Now, the state reserves minerals in tax sale lands and things like that. I'm afraid that the state would lose these minerals if they were not drilled for or some exercise of the servitude taken within ten years. I think possibly, that the state could lose some rights-of-ways and things like this under the...if this is restricted to acquisitive prescription. Now, I know there are some problems with it, but the legislature can prescribe by general law, or otherwise how prescription is to run against the state...if it is to, and the legislature has done this...and in what circumstances prescription, both liberative and acquisitive, is to run against the state, which the legislature has done. I urge the adoption of the amendment and I'll try to answer questions.

Questions

Mr. Chatelain I'd like to get this point clear as you know I'm a non-lawyer, which is often said here. You said at the legis...that the prescription shall not run against the state in civil matters; you come back and say, "unless otherwise provided in this constitution or expressly by law." Does that mean that the legislature has the authority to run against the state?

Mr. Newton Yes, that's correct, that's correct.

Mr. Newton Provided the prescription does not run against the state in certain instances...and it can still do that.

Mr. Newton I think that's correct, that's correct.

Mr. Newton Yes.

Mr. Newton I think that's correct, that's correct.

Mr. Newton I think that's correct, that's correct.

Amendment No. 1. On page 15, delete lines 6

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Mr. Lanier The thing that bothers me is if... say school boards are not covered by your proposal, did you know that in my parish a lot of the sixteenth sections of the school boards are way out in the marshes, and that it would be easy for someone to acquire this land by prescription by setting on it?

Mr. Newton I did not know that about your parish. I know that that is a problem in some of the parishes of the state. My understanding is that is the way the law has been interpreted, that it does run against the school board... and drainage districts, too. I'd like to... to address myself to that problem at a later time.

Vice Chairman Casey in the Chair

Mr. Avant Mr. Newton, I want you to know that I think this is a good idea and I ask you, isn't this the exact language of the present constitution?

Mr. Newton This is the exact language of the present constitution. I believe this state has been living real well with it... since 1921.

Mr. Avant Aren't there many, many decisions which have passed on the question as to whether the Levee Board is at the state, the school board is at the state, is this the state, or that the state--and we couldn't possibly sit down here and try to write something that is going to cover all of these contingencies, could we?

Mr. Newton I'd rather not try to, right now, Jack.

Mr. Avant This is the best thing we can do under the circumstances?

Mr. Newton That's my opinion.

Mr. Avant It [is] there is anything, any particular inequity anywhere in the law, they can go to the legislature and get it straight, can't they?

Mr. Newton Under this amendment, I believe so.

Further Discussion

Mr. Conroy I strongly urge you to support the Newton and Planchard amendment. We're in an area right now as I indicated earlier that does involve property rights. Mr. Newton referred to that... it was brought out by further questioning, but this is the kind of area that the Constitutional Convention should be very careful in tampering with. The Newton and Planchard amendment puts into the new constitution exactly the language that's in the present constitution, which has been pointed out, had been interpreted by the courts, adjustments have been made, the legislature has acted on the basis of that in many areas. It has provided appropriate periods of limitation where it needs it. For example, in the taxation field, the state has provided periods of limitation within which the state must act in order to bring tax claims against individuals and where these things are appropriate, the state can, and shall, act to limit its own authority. But, I'm not sure, that the Arnette amendment as adopted, does what he intended it to do by failing to refer the liberative prescription at all. I'm not sure whether he might not have in some way limited the legislature's authority to deal with the liberative prescription. I think the only safe thing we can do in this particular area is to reinstitute in this constitution the language which has been in it, has been interpreted for over fifty years, and I think has been soundly interpreted. We should keep it, and not run the risk of the state losing rather substantial amounts of money and claims to lands and mineral rights and other things of that kind. I urge your support of the amendment.

[Previous Question ordered. Record vote ordered. Amendment adopted: 106-6.
Motion to reconsider tabled. Motion for

the President... to be...
[...]

Amendments

Mr. Poynter Now, Mr. Pugh, we're going to need a third amendment added to your amendments to delete the Planchard-Newton amendment... Newton-Planchard amendment.

Amendment No. 1. [By Mr. Pugh and Mr. Lennox]. (how a third amendment will have to be added to the distribution, which will delete the Newton-Planchard amendment).

Amendment No. 1. On page 15, line 11, after the partial word "stitution" and before the word "by" delete the words "or expressly" and insert in lieu thereof a comma ",".

Amendment No. 2. On page 15, line 11, after the word "law" change the period "." to comma "," and add the following: "or by contract with the state."

Amendment No. 3, as indicated has to be added deleting the Newton-Planchard amendment just adopted.

Explanation

Mr. Pugh Mr. Chairman, fellow delegates, I appreciate your not calling for the question so that I might submit this amendment to you. As you know when it relates to prescription... prescription cannot be waived unless or until it runs. You cannot validly under the existing jurisprudence in this state waive prescription in advance. Bearing that factor in mind it is conceivable that as was asked of the last speaker, or the one before him, how can you protect yourself in a contract relative to this prescription? By this amendment, if the state wishes to do so... by contract it can set the limits of the prescriptive period. If, by contract, the state is so vitally interested in a project, and if the question is raised by bonding attorneys or others relating to prescription, the state may specifically and expressly provide that after five years, or three years, as it may choose to do under the terms of that specific contract, prescription will run. The thought came from a question from some other member on the floor. Mr. Lennox and I took his thought, placed it in this amendment and I think it's an excellent one as it relates to the question of prescription. I, also, deleted "or expressly" from a pure construction standpoint because as the last amendment provided it says "by law or expressly by law." I don't know how you can be more expressly than by an act of the legislature. All this does is allows the state, if it wants to, to provide in a vital contract that after a certain period of time the question is forever barring prescription as run.

Questions

Mr. Bollinger Mr. Pugh, does not your amendment, or would not it affect the Newton amendment as it would the committee proposal, that is, you are offering a second amendment which would delete the Newton-Planchard amendment? Why are you doing this?

Mr. Pugh Because David told me I had to. No other reason...

Mr. Bollinger Do you agree with him... that it is necessary to add the language in that we deleted with the Newton amendment?

Mr. Pugh Well, as my record will show I voted for that other amendment... I'm not quarreling with David about how he lines all of this stuff up. I just believe him to be honest in telling me the truth that's all. I just do what he tells me. Sometime, not very well.

Mr. Avant Mr. Pugh, would not your amendment mean that on a contract basis the rights of laborers, material men and people who have certain lend privileges on building contracts would never know where they stood, that it would vary from contract to

contract?

Mr. Pugh Absolutely not. Quite the contrary.

Mr. Miller Is there any question whether or not the state is bound by the contract?

Mr. Pugh There is no question whether or not the state is bound by the contract. The contract that you enter into with the state can specifically spell out the terms in which it will run against the state has nothing to do with the running against the prescription on the other individuals.

Mr. Avant Well, for what purpose did you make a reference to a bonding company awhile ago?

Mr. Pugh I didn't say bonding company. If I did, I apologize. I meant to say a bonding attorney. I may well have said company. If I said company, then I express that through the lawyer. I'm just saying if a bonding lawyer raises a question about: we won't bond this because if there's any problem, prescription doesn't run against the state. I say that the state in all of its wisdom can contractually provide that after three years or five years that question is forever barred or settled.

Mr. Burson Mr. Pugh, of course, under the general law of the state a mineral servitude prescribes in ten years. I was wondering, wouldn't your amendment imply that the state could by contract provide for prescription in less than ten years for

Mr. Pugh Yes, they could. The state could get it back quicker that way perhaps.

Mr. Burson You want this...you want the state to be able to waive prescription to what I was thinking of was in terms where the state might make a reservation on a particular tract. Would you want the state to be able by contract to make that reservation for less than ten years?

Mr. Pugh Or more than ten. I think it swings both ways, I have no objection to that.

Mr. Arnette Mr. Pugh, would consider letting the Clerk redraft your amendment so that it applies to Mr. Newton's amendment instead of the committee proposal...because he said it wouldn't be much trouble.

Mr. Pugh I'll be glad to do anything David wants to do, other than to lay down and die. Anything within reason, I'll do.

Mr. Poynter Well, Mr. Pugh, I'm going to be real nice, too. I'd like to do it the way you want to do it. Now, do you want it...whichever way because I think it makes some difference to some people whether your amendment affect the Newton amendment or whether they would be drawn to affect...to delete the Newton amendment and restore the original proposal. I'll certainly be happy to change the amendment to effect that whichever way you would prefer. It is presently drawn and introduced to delete the Newton amendment and to amend then the committee drawn and redrafted...

Mr. Pugh did not have that understanding.

Mr. Pugh I'm going to draw the amendment of the committee proposal with Mr. Newton's amendment. I am for your amendment if you use it to end delete Mr. Newton's.

Mr. Pugh I'm going to draw the amendment of the committee proposal with Mr. Newton's amendment. I am for your amendment if you use it to end delete Mr. Newton's.

Mr.

Mr. Poynter

Mr. Poynter

Mr. Poynter

Mr. Poynter Delegate Pugh had redrafted the amendments he had previously withdrawn. However, he indicates at this time, Mr. Vice-Chairman that he does not wish to go with that set of amendments. However, Delegate Miller does have amendments.

Amendment

Mr. Poynter Now, Mrs. Miller, it's my understanding that you wish this language to be added as a language provided for in the Newton amendment, is between lines 11 and 12 and following the language added by Convention Floor Amendment No. 1, proposed by Mr. Newton and Planchard and adopted by the Convention on today, add the following: (Strike out that Section 29 just pick up with a separate unnumbered paragraph) "Neither the lands nor the mineral rights of the state, its agencies, school districts, and political subdivisions shall be subject to loss through prescription. The mineral rights on all property transferred or sold by the state, its agencies, school districts, and political subdivisions shall be reserved except where the owner or other person having the right to redeem may buy or redeem property sold or adjudicated to the state for taxes. The legislature may provide by law for the leasing of such lands for minerals and other purposes subject to the provisions of this constitution."

Explanation

Mrs. Miller I think that this is a very important amendment to come in at this particular point in the constitution. Now, I do know that the Natural Resource Committee might later come in with the same type of statement. If it does, we may take care of that at that time. But, I do think that we need to make this statement now, we just can't depend on something else coming in at a later time because we've left a very large gap in the mineral rights of state lands. This provides the three instances to take care of three different situations and there may be a fourth that we might provide for by a later amendment, if this passes. But, "Neither the lands nor the mineral rights of the state, its agencies, school districts and political subdivisions shall be subject to loss through prescription." This now ties in with what the law is, is that the state land...the

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I don't think it's a very important amendment to come in at this particular point in the constitution. Now, I do know that the Natural Resource Committee might later come in with the same type of statement. If it does, we may take care of that at that time. But, I do think that we need to make this statement now, we just can't depend on something else coming in at a later time because we've left a very large gap in the mineral rights of state lands. This provides the three instances to take care of three different situations and there may be a fourth that we might provide for by a later amendment, if this passes. But, "Neither the lands nor the mineral rights of the state, its agencies, school districts and political subdivisions shall be subject to loss through prescription." This now ties in with what the law is, is that the state land...the

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herein shall prohibit the leasing of lands. I'll be glad to answer questions.

Questions

Mr. Newton Mrs. Miller, isn't this presently for the most part statutory?

Mrs. Miller No. Some of this is constitutional matters now. Of course, the imprescriptibility of mineral rights as far as the state I believe should be constitutional. If you don't make these things constitutional, you may be in the same predicament we are right today. In 1972 both Houses of the Legislature passed an act that just gave a state agency complete authority to contract away the state's minerals. So, unless you have some constitutional provision we might be in this type of situation again. I don't believe that's what the people of Louisiana want.

Mr. Newton Now, don't you think that possibly your last sentence might restrict how the state could develop its minerals in the future?

Mrs. Miller Well, this last sentence is the law as it is today except it's phrased in the positive instead of in the negative.

Mr. Newton Well...I know, but that means in effect that they could do anything with it...and to lease it, also. Now, here this might be getting reversed where they couldn't do anything with it, but lease it. I have another question; these mineral rights, would that...that would include things besides oil and gas, wouldn't it? It would include sulphur, gypsum, iron?

Mrs. Miller Yes, and that's why we said mineral and other purposes. There are a great many type of state leases now in state lands that the land office and other agencies deal with.

Mr. Hernandez Mrs. Miller, I think your amendment is certainly worth consideration and I like it very much, and I think it's all very clear except one little thing here. The second sentence says "the mineral rights on all property transferred or sold by the state, its agencies, school districts and political subdivisions shall be reserved except." Now, this is where, Mr. Clerk, "except where the owner or other person having the right to redeem may buy or redeem the property sold or adjudicated in the state for taxes." Now, when the owner or another person having the right to redeem property and they do redeem the property, I want to get this clear, do they get the mineral rights back on this land?

Mrs. Miller Yes, they can get the mineral rights back. Now, they may have to be...this may be something the state will have to take care of by law...to provide for the prov...to provide how the method will be that they will be given when you purchase a...

Mr. Hernandez Yes, well, but this definitely will give them the right to redeem the mineral rights on this property that was adjudicated to the state for taxes?

Mrs. Miller That's correct.

Mr. Hernandez Thank you so much.

Mr. Leigh Mrs. Miller, in that question that Mr. Hernandez asked you about, are you using the words "buy and redeem," or are you using those as being synonymous? I understand there is a provision for the sale by the state of lands adjudicated to the state and not redeemed, they can be sold.

Mrs. Miller That is the present practice now...other than...

Mr. Leigh But, when they are sold, the mineral

rights are reserved.

Mrs. Miller Ordinarily, unless they buy them back.

Mr. Leigh Now, what I'm asking you is the words "buy or." In other words if he redeems, he would get his mineral rights back, but that shouldn't apply, do you think to the purchase of lands? Would you agree to delete the words "buy or" so that the person entitled to redeem might redeem it, but not buy it, is the point I'm making?

Mrs. Miller I'll be happy to make that deletion, and just leave the words "redeemed for taxes."

Mr. Leigh Delete the words "buy or." Could that be done by a technical amendment without...

Mrs. Miller I'll have to ask the Clerk. Mr. Clerk, in this amendment on the second sentence, could the words "buy or" be deleted as a technical amendment right now without...

[Amendment withdrawn and resubmitted with correction.]

Mr. Duval Mrs. Miller, does the Natural Resources Committee have provision which would encompass this idea?

Mrs. Miller Some of this may be included. At this state it does not encompass--it's a whole idea and I'm not a believer in waiting and saying, I do believe a bird in the hand. I believe too, we've opened up a very important question on the Section 6...29 that we just mustn't leave it to chance that it might get taken care of later.

Mr. Duval But, your intent is for this amendment is to apply to the basic management of state lands, is it not...not merely it doesn't...merely deals...the problem of thrust is not local and parochial is it?

Mrs. Miller That's correct. So, if we come in with a natural provision that will encompass this, it might be that when we get to Style and Drafting we can delete any surplus language here.

Mr. Duval Now, let me ask you a substantive question--Right now if...the law is...I'm going to ask you...if you purchase land from a police jury, is the...are the minerals automatically reserved?

Mrs. Miller They're supposed to be. Of course, there has been a lot of problems in conjunction with these lands where they have dealt with local political subdivisions. This is one reason I think it's important to go on and include it here because you do not have the good management sometime of the leases when it comes to your local subdivisions. They don't always know how to manage and lease the lands, and what they should reserve and what they shouldn't.

Mr. Duval What I'm asking you, as a matter of law, then it's not...if the minerals are not reserved in an alienation from a local political subdivision to an individual, the minerals go to the individual?

Mrs. Miller That would be a question although, I think that it would...I think...and it's usually been interpreted that way many times, I understand.

Mr. Duval So, this would represent a change in the law where a private individual could never purchase minerals from any type of political subdivision, is that what it does?

Mrs. Miller I think it would make that very clear.

Mr. Duval What's the purpose of that? Why do you want to change the law? What is your primary purpose in doing that?

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Mr. Burns: I believe now most of your political subdivisions have enough knowledge about the value of their mineral rights. They do reserve these things and then they become inalienable as a state agency...you know in a state political subdivision. So, this takes care of those few situations where the people managing the political subdivisions don't always know how to manage their things properly.

Mrs. Miller: Now, Mr. Miller, you now we have a procedure now, as has ever since I remember, where property that has been adjudicated previously to the state, a citizen can come in and make application to have that particular piece of property advertised, and, I believe, put a deposit, and it's sold at not less than the appraised value, but the minerals are not included; they are reserved by the state. Would that make any change in your amendment?

Mrs. Miller: No, basically, because I believe now, Mr. Burns, they do have a provision where the person who is buying back the property...redeeming the property.

Mr. Burns: No, I'm not talking about redeeming it. I'm talking about where just any citizen can come in and file application for the state to advertise for sale, property that has been previous--I don't know how many years--been adjudicated to the state and has never been redeemed.

Mrs. Miller: I think now, since we deleted the words "Leigh's suggestion," that would take care of that situation, where the person is only where the person is redeeming the property adjudicated.

Mr. Burns: I see, but if you're buying it, it wouldn't get the minerals.

Mrs. Miller: I think it would be better if it were redeeming.

Mr. Chatelain: Delegate Miller, I wish you would follow with me in your second sentence, where you're having a little problem understanding. I think you deleted the words "buy or" it seems that the person who has a right to buy this land, it looks like the language is a little bit different to me. It looks like you had it better when it was first. In other words, if a third party has a right to buy this lease, or whatever it may be, it seems like your language was best at first. Can you clear me on that, please?

Mrs. Miller: Well, let me...here's what happens sometimes. A great many people make it a practice to go around this state buying in property at tax sales, and so forth. I think Mr. Leigh's amendment was very good...I mean his suggestion that we delete the "buy or", really does bring this into focus because it limits this to the person who has the right to redeem that property, and kind of...it's not an immediate fire as just a lot of speculators, and maybe gives the state a chance to keep that property where it's just sold to someone else other than the person with the right to redeem it, who lost it.

Mr. Burns: Now, Mr. Miller, you just mentioned something, we have in Louisiana this, where sometimes, it seems to me that the state has a right to buy it, but I guess you know what you're doing.

Mr. Burns: Now, Mr. Miller, if that amendment is adopted, if adopted, affect the present procedure, the way it is now, in Louisiana, where the state has a right to buy it, but I guess you know what you're doing.

Mr. Burns: This amendment would affect the Louisiana law, I think, where the state has a right to buy it, but I guess you know what you're doing.

present law. In fact, it incorporates the present law, but it makes it more positive rather than the negative...

Mr. Lennox: In that event, the applicable state agency--in this instance, the Louisiana Wildlife and Fisheries Commission, would have to lease state-owned water bottoms for the production of various minerals subject to the contractual arrangement between the state and whatever party might be doing that work?

Mrs. Miller: Subject to the provisions of whatever law the legislature provides, as it is now.

Mr. Burns: Now, Mr. Miller, if I understand this amendment, would it be that the state could receive these rights but could not transfer them?

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Mr. Burns: Now, Mr. Miller, if I understand this amendment, would it be that the state could receive these rights but could not transfer them?

Mrs. Miller: Yes, and this is in keeping with the spirit of the law as it is today, but the mineral rights, only acquired by the state, would become inalienable and stay with the state, and this is what we're trying to preserve is that the state does not lose these things or necessarily just transfer them through some state agency having power...

Mr. Hayes: This is for only by prescription are you concerned. It's only by prescription that this...

Mr. Burns: Now, this is the prescription phase of that.

Mr. Velazquez: Mrs. Miller, this section that you've presented, isn't this basically the same thing as the existing law that we have today in Louisiana?

Mrs. Miller: Yes, this is basically the law as it is today, and I think it is in keeping with the spirit of the law as we know it today.

Mr. Velazquez: There is no drastic change here from the present law as expounded in the judgment of the State of Louisiana?

Mrs. Miller: No, I wouldn't want to mislead you and say absolutely not, but in my belief it does not change any of the existing laws, but it does change some of the law to make it more clear that...

Mr. Burns: Now, Mr. Miller, if I understand this amendment, would it be that the state could receive these rights but could not transfer them?

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Mr. Thompson This is dealing with the whole constitution that we may adopt. I think it's out of order in this section. It should be somewhere later on when we get through writing the constitution.

Mr. Roy It's in the proposal, Mr. Thompson. It can't possibly be out of order at this time.

Mr. Thompson Well, I don't think it's in the right place, at least.

Mr. Roy Well, but it's here and we have to consider it unless you...if you don't like it, then, you know, you may try to delete it, but it's here and we've got to consider it.

Mr. Thompson Can I ask Mr. Burson a question?

Mr. Roy He hasn't explained it yet. As soon as he explains it, you may.

Explanation

Mr. Burson Mr. Chairman, fellow delegates, let me begin by saying Mr. Thompson is undoubtedly correct in that this provision would probably be better placed by Style and Drafting in another section of the constitution. However, the reason why the committee proposed it in this section, I think, is rather obvious; if you will recall the vociferous debate that we had on Sections 7, 8, and 9, where there was a lot of discussion as to whether the home rule charter would or would not predominate over the constitution, and where there have been continuous amendments offered, particularly to this proposal, saying "subject to the provisions of this constitution or not inconsistent with the provisions of this constitution." I think that a provision of this type is a boiler plate provision in most constitutions. You would want to set out in unequivocal terms that the provisions of this constitution are paramount, and that neither the legislature nor any political subdivision or any description whether it be a parish, municipality, or other political subdivision, shall enact any law or any ordinance that's in conflict with the provisions of this constitution, whether they are provisions contained in this article or in any of the other articles we've adopted, or any article we will adopt. I think that, really, it's largely self-explanatory.

Questions

Mr. Tate Mr. Burson, would you accept an amendment that says "subject to and not inconsistent with any other provisions of this constitution?" This constitution is supreme.

Mr. Pugh Can you tell me, if we don't adopt this section, how anything other than the results of this section could conceivably, possibly, flow? How can this constitution be anything but paramount to those things?

Mr. Burson Mr. Pugh, I would agree with you that that should be Horn Book Constitutional Law. However, this is one of the things that if you don't say it, apparently disturbs some people. Again, I think we need only look at the numerous amendments we've had offered to particular sections saying "subject to this constitution," or "not inconsistent with this constitution," or "subject to the provisions of another article of the constitution," and so on. The United States Constitution says it, and I say it doesn't do any harm to say it here.

Mr. Pugh Well, don't you think then, at least, we ought to make this all-embrasive language in an area other than in this particular article? Shouldn't it be somewhere later on in the constitution, so at least we're talking about the whole constitution and not just this article.

Mr. Burson Well, Mr. Pugh, we are definitely talking about the whole constitution in this particular phraseology. Now, I will agree with you, just as Mr. Thompson pointed out, that you probably ought to move it to another article, but we haven't had anybody offer it up until now in either the Legislative Article, Executive, Judiciary, or the Bill of Rights.

Mr. Pugh I suggest the reason it wasn't offered is because it is so patently clear.

Mr. Roemer Jack, don't you...doesn't this section remind you of President Nixon when he gets up to give a speech he says "I can assure you, I am the President"?

Mr. A. Jackson Mr. Burson, if you believe that this section is necessary, would the committee agree to delete it at this time with the understanding that it will be placed in the General Government Article where I think it appropriately belongs, if it belongs at all?

Mr. Burson Mr. Jackson, I would certainly not have any objections to placing it there because that's where it belongs, but I think the debate that we've had--particularly when we were talking about the home rule charter question--indicates that we should have it in here somewhere, and that's the reason why the committee proposed it.

Mr. A. Jackson As chairman of Bill of Rights and Elections, I would offer to place it in there, if that meets with the committee's approval.

Mr. Burson Well, if nobody else on the committee objects, I certainly won't.

Mr. Kean Mr. Burson, now that we've got this matter on the floor, and it provides that the constitution is supreme, and so forth, even though it ought to be obvious that it is, if we now withdraw it or if it doesn't now or otherwise appear in the constitution, would that be construed as some indication of intent that the ordinances and legislation would be...could be inconsistent with the constitution?

Mr. Burson Well, I would certainly hope not, and since Mr. Jackson has indicated that his committee would put it in the general provisions...I would like to ask for about a two minute recess, here where we could discuss this with the members of the committee and see if we will not voluntarily withdraw it at this stage.

Recess

[A recess of approximately 15 minutes was taken.]

Further Discussion

Mr. Burson In this new convention by consensus that we're conducting here, we've agreed that the committee will go along with Senator De Blieux's amendment to delete this provision with the understanding, as Mr. Jackson has already said, that it will be introduced at the proper time with general provisions.

[Amendment withdrawn.]

Amendment

Mr. Poynter Amendment sent up by Delegate De Blieux as follows:

Amendment No. 1. On page 15, delete lines 12 through 16, both inclusive in their entirety.

Mr. Roy Mr. De Blieux, naturally you don't need to explain this, do you?

[Previous question ordered. Recess.]

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Mr. Avant That's not correct?

Mr. Lanier The legislature may not legislate with reference to the organization and structure.

Mr. Avant Or the particular distribution or redistribution of powers and functions, correct?

Mr. Lanier That relates to who exercises the particular power, but I think the legislature still has the right to act with reference to the powers and functions themselves although they are prohibited from acting with reference to the organization and structure, and the distribution and redistribution of the powers and functions within the organization and structure. That's the way I understand it.

Mr. Avant Alright. Now, my next question is this: Even though the legislature may not act with respect to the particular distribution and redistribution of powers and functions, two, or three, or four, or five, or a dozen municipalities, or parishes, or combinations thereof, could get together and agree on how they were going to distribute and redistribute their powers and functions as amongst themselves, isn't that right?

Mr. Lanier I would say that once the original home rule charter is drafted setting up the organization and structure and the distribution and redistribution of the powers and functions, that in order for them to accomplish that in joint relationship with each other that each would have to amend their home rule charter to so provide.

Mr. Avant You think that--then this Section (A)--before a home rule charter governmental subdivision can enter into any such agreement that's going to change their method of operation in any degree, they're going to have to amend their charter?

Mr. Lanier That's not necessarily so. It depends on how their charter is set up. It may be set up so that they can exercise jointly powers and functions with no amendment whatsoever.

Mr. Avant Alright. If they put that in there then all of them that do that can make all kind of deals with respect to the particular distribution and redistribution of powers and functions, but the legislature wouldn't be able to control it.

Mr. Lanier If a local governmental unit felt that it was to its advantage to modify its organization and structure, etc. in order to cooperate with its neighbors in the best interest of the people of the area, it certainly could do so by way of an amendment.

Mr. Avant Now this is not limited to neighbors, is it? This would apply, say, to Baton Rouge, the city of Baton Rouge or the parish of East Baton Rouge, making some sort of agreement with the parish of Caddo, wouldn't it? They don't have to be neighbors.

Mr. Lanier That's correct.

[The following question was asked by a member of the audience and was answered by Mr. Lanier.]

Point of Information

Mr. Avant Point of information, Mr. Chairman. We have the right to declare the constitution as such, separate and apart from any amendments, do we not?

Mr. Roy That's correct.

Mr. Avant Now, if the previous question on the

entire subject matter is called, will that not cut off debate on the entire section as such?

Mr. Roy That's correct, except for the closing argument.

Point of Order

Mr. Denney Point of order, Mr. Acting Chairman. I'm not certain whether the last amendment deleted the previous amendment so that "any school board" is no longer in this section. Would you please read the section as it now reads?

[*Representative Denney's question was withdrawn.*]
[*Representative Denney's question was withdrawn.*]

Mr. Poynter Mr. Vice-Chairman, a couple of people have inquired whether the words "or school board" are still in there. They are not by the effect of, I believe it was the set of two amendments first proposed by Delegate Burson yesterday that struck "or school board," then added in paragraph (B), "the provisions of this paragraph shall not apply to school boards." That latter language being finally deleted itself by a subsequent amendment. So, the phrase "or school board" does not appear in what remains of the section at this time.

Further Discussion

Mr. Avant Mr. Acting Chairman and fellow delegates, I rise to urge that you reject this section because I think that as it now stands, in the context of the rest of this article as we have adopted it up to this point, it is a very unwise section. Now, let me tell you what my objection to this section is, and then I think you will agree that what I tell you the facts are, is true. Then, if you think that you want to vote for it that way, then that's certainly your prerogative. But, first, let's look at Section 9. Now, this is the language of Section 9 as we have adopted it, this would apply to any municipality. It would certainly apply to any home rule charter municipality. Now, you look at this section. Any political subdivision--it applies, also, not to just local governmental subdivisions, but any of these special agencies or governmental bodies that we have provided the authority to have them created by local government. Now, let me tell you, I respectfully submit that this gets back again to the basic philosophical question that I have asked from this podium several times. That is simply this: Are we going to write a constitution for the State of Louisiana? Are we going to recognize that there is a State of Louisiana, or are we going to write a constitution and operate as some sort of a confederacy, or some sort of league of cities, or whatever you might want to call it? But, under this section as it is proposed, any number of local government units, anywhere in the state, any combination of them as to whether they may be parishes and cities and levee boards, any combination of them, over any geographical area you pick--it could go from the mouth of the Mississippi River to Caddo Lake--may get together and make any kind of agreement with respect to their powers and functions of the particular manner in which their powers and functions are going to be exercised that suits their fancy. The legislature has nothing to say about it. The rest of the people in the state, other than the governing authorities of those particular units, have nothing to say about it. Now, if you think that's a good, sound thing, that that's the way the government of this state should be operated, then I just can't argue with you. But, as somebody pointed out from this podium yesterday, the Constitution of the United States provides that states may not be making agreements with other states or with foreign powers except in those instances where they have been authorized by the Congress to do so. The Congress has authorized agreements in certain particular in-

stances, but they have never given an absolute blanket authority for that such as we are proposing. I don't think I would want to do that. I have told you what the section permits, what it means, and what it's intended to do. I respectfully submit to you that that's bad; that you should not have that type of situation without some type of control by the state legislature in which all of the people of the state have a voice, and in which all of the people of the state are represented. Not just certain particular local areas which for reasons that may not be in the interest of the state or its people as a whole, may get together and make these agreements. Now, there are certain areas in which I strongly advocate intergovernmental cooperation, but I think that it is far too serious a matter to give an absolute blank check to local government without any supervision or control by the legislature whatsoever. I seriously urge that you reject this section as it is written. If you want to come back with it in some other place, in some other manner, and re-write it to where it covers subdivisions, then I would be the first one to be in favor of it. But, this section, as it's written, I submit to you is not in the best interest of the people of the State of Louisiana, and I urge that you reject it.

Further Discussion

Mr. Toomy Mr. Chairman, fellow delegates, I rise in support of this section as it stands right now. I can't understand the objections that have been raised. If you read the section, it only allows for joint cooperation of powers and functions that are authorized to the political subdivisions, and I don't see how the joint conduction of such powers and functions would be such a big and bad influence on the State of Louisiana. We're only talking about the same powers and functions that the subdivisions could individually exercise. I don't see how the joint exercise would be such a bad influence on the state; I can only see how it could benefit the areas concerned if they voluntarily want to cooperate in such powers and functions. Again, I repeat, this says "its authorized powers and functions," which means they would just be jointly performing powers and functions which they could individually do otherwise.

Questions

Mr. Dean Mr. Toomy, isn't it a fact that the last part of this Section 23 says, "except as the legislature shall provide otherwise by law," so that the legislature could regulate the exercise of this power if it wanted to do so?

Mr. Toomy Yes, I think that's true, Mr. Dean. I think that's the way it should be. All right.

Mr. Lanier Mr. Toomy, isn't it true that this section is only a suggestion of intergovernmental cooperation on the collection and management of public utility taxes? Is there such general authorization such as this in our present law?

Mr. Toomy That's true, Mr. Lanier, and I'd like to bring up the point that that is one of the many things that we are going to do. I might again say, that as you are aware, even the model state constitution has a provision that allows for the intergovernmental cooperation.

Mr. Toomy Mr. Chairman, I think that's all right. I think that's all right. I think that's all right.

Mr. Toomy Mr. Chairman, I think that's all right. I think that's all right. I think that's all right.

Mr. Toomy Mr. Chairman, I think that's all right. I think that's all right. I think that's all right.

Mr. Flory There is where my question lies, in that they can do it until the legislature comes back and then legislates to the contrary. So, in effect, what you are saying is that the legislature then has to go about putting out the fires over the state.

Mr. Toomy I really don't think that's the case. As I see it, "as the legislature shall provide otherwise by law," would not mean negating local agreements between political subdivisions to operate...their daily operation. I just don't...

Mr. Flory My last question is, then, don't you think this is going to compound the problems for local governing authorities insofar as in the definition of political subdivisions, you are talking about districts that the governing authorities create, and particularly with reference to where they enter into an agreement with the federal government or an agency thereof on a matching basis on finance? That particularly when they enter into that agreement, then the federal government later cuts out the grants to that program, the governing authority then gets hooked by some action of a district that has been created with the full tab?

Mr. Toomy Maybe I don't understand your question. I don't agree with your point of view. I think we have provided in the previous sections for enough jurisdiction of the governing authority over the agencies which they create. I can't see how allowing the governmental subdivisions, political subdivisions to cooperate as they might see fit could in any way harm the area.

Mr. Poynter I add a "Section 27.1 Subdivision: Right to..."

Section 27.1. (1) The State of Louisiana is being retyled at this time. It is necessary for you some copies, but I think you can find them. Mr. Would read: In the event of any political subdivisions, except for ports, levees, and highways, by political subdivisions, the owner of the property expropriated shall be entitled to a summary appeal.

Read that again. The first line should read: In the event of any political subdivisions, except for ports, levees, and highways, the political subdivisions, the owner of the property expropriated shall be entitled to a summary appeal.

Legislation

Mr. Toomy Mr. Chairman, I think that's all right. I think that's all right. I think that's all right.

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Texas holding that constitutionally sound. No state has ever provided a right to its someone's property for an industrial subdivision by expropriation. Additionally, yesterday, we provided, in fact, that if you had some family property—that is to say, if Aunt Millie's home was the first home in a parish, then you could take that home from her and pay her a consideration therefor. Now, premitting all of these questions, to take, premitting all of these questions, the only thing that I humbly beg you now to consider is that under our law, the only person who would decide whether or not this taking was proper would be the district court. Thereafter, the sole question relegates itself to proceeds. It has nothing to do with whether or not my children ought to be able to have Aunt Millie's house. From the moment that case is decided in the district court, to all due respect, the judges there are subject, obviously, to a lot of political local thought about how nice it would be to have Aunt Millie's house. You can take that property, and all they can talk about later on is money. I'm not asking you to withdraw what you did to allow us to do what nobody else in this country can do. I do ask you to consider that if you do that, then except as to streets and highways, except as to levees and even ports, that an appellate court can review whether or not you should have been able to take it. All that does is allow an appellate court to review not only the money involved, but whether or not you had the right to take it. Now, gentlemen, before somebody asks me whether that's going to delay us, I filed a suit in the State of Louisiana on October 10, and the United States Supreme Court is going to decide that case on October 9, less than a year later. I tell you if Aunt Millie's home has been existing here since 1812, then Aunt Millie or her heirs ought to have that year. If you can go all the way to the United States Supreme Court and resolve a question in a one year period of time, then, by golly, let's at least let somebody else look at whether or not this political subdivision and the district judge was right. Without that, we're talking about a suspensive appeal. No court looks at whether or not it really was the best thing to take this property for an industrial subdivision. Now, in Caddo Parish, we've got one of these industrial subdivisions that wasn't taken, but was created out of an old farm. It was a...we call it C.C.I.; it was a penal farm. Today, if you live in Caddo Parish and you want to buy a tract in that industrial subdivision and you have a business already there, you can't buy it because they want only people from the outside to buy in that industrial tract. Again, I tell you, nowhere in this United States—I cited a case for you yesterday that held it to be unconstitutional to do that—nowhere in this United States can you do what was done yesterday. I'm not trying to stop that. I do say, though, let's let some other court other than the district court decide whether or not it's right or wrong. It has nothing to do with the quick-taking statute—build your highways, build your streets. It has nothing to do with the ports—build your ports. It has nothing to do with the levees and the floods—build your levees. It merely applies to other things. I beg you to seriously consider the question of expropriation. You know, you take something that belongs to somebody else. Sure, you're paying for it, but suppose he don't want to get money. Suppose he wants to keep his property. Under what you did yesterday, you can take it, and I'm not asking you to now quarrel with that. I would have yesterday, but I'm not now. All I'm now saying, at least give the poor devil the right to have that matter reviewed. Thank you.

Questions

Mr. Lanier Mr. Pugh, aren't the matters of suspensive appeals and devalutive appeals covered in the Louisiana Code of Civil Procedure?

Mr. Pugh Say are they covered there?

Mr. Lanier Aren't they covered there?

Mr. Pugh Yes, they are covered there.

Mr. Lanier Isn't that a statute?

Mr. Pugh I'm saying that unless you spell it out here as a right to an appeal, these statutes may not apply to give him a suspensive right. Now, I'll tell you this, in the statutes, he doesn't have a suspensive appeal today. However, the statutes don't provide that you can take his property for an industrial subdivision, and they don't provide that you can take his grandmother's home from him. That's the same statutes.

Mr. Lanier Well, my point is, Mr. Pugh, couldn't the Legislature amend the Code of Civil Procedure to provide what you wish here?

Mr. Pugh Article 1, Section 4 of this constitution provides that the political subdivision can take it. Now, it also says that a private property can...private corporation can only take it with judicial review. There's nothing about a judicial review in Article 1, Section 4, when it relates to the taking of property. For that reason, I say he does not have the right to a review, regardless of what the legislature says. That's what's in the section, and read it.

Mr. Lanier I already have.

Mr. Kean That case you referred to that got from the district court to the United States Supreme Court in a year, that was because you had a little cooperation from other counsel in getting it up there, wasn't it?

Mr. Pugh Another lawyer and I filed the case and took it direct to the Louisiana Supreme Court. After that, there was no help.

Mr. Kean Let me ask you this, Mr. Pugh. If I understand your amendment...your proposal correctly, if you had a courthouse that you wanted to build and you had a site for that courthouse, then you'd...you'd be entitled to a suspensive appeal in connection with that taking?

Mr. Pugh Yes, sir, you would have it, and I'm not satisfied that you can't decide whether or not you want a courthouse to be built and where you want to build it in less than a year. I know of no courthouse in the State of Louisiana that they didn't deliberate for a lot longer than that before they decided: (1) whether they were going to build it, and (2) where they were going to build it.

Mr. Kean Well, we're talking now, though, after they have made the decision where they are going to build it. Then, that's when the suspensive appeal comes into play, doesn't it?

Mr. Pugh Mr. Chairman, I'd like to withdraw the amendment, add the word "courthouses," and return the amendment.

Mr. Roy The gentleman moves to withdraw the amendment.
Mr. Kean.

Mr. Kean I don't have any objection, Mr. Chairman, but I've got a list of about ten other projects here that would be affected by this amendment, and I want to get them all in there.

Mr. Pugh Well, so far, let's put the courthouses in.

[Motion from withdrawal of amendment withdrawn.
71-23.]

Amendment

Mr. Poynter [Amendment by Mr. Pugh] "Section 27.1.

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--but, the committee reached the following conclusions, in case that you have forgotten what they were: (1) Adequate provisions should be made in the constitution for the continuation of levee districts or flood control districts. (2) The legislature should be given the authority to consolidate small and noncontiguous levee districts in order to provide for more efficient management and operation of these districts, and to provide for fewer levee boards. (3) The legislature should be granted the authority to divide levee districts which are located in one or more parish in order to provide the possibility of merging levee districts into the governing authority of those parishes.

As a result of this study, there were two bills introduced into the legislature last year which passed. Those bills dealt with the Internal Organization, you might say, of the levee districts. The per diem to members of these districts varied from ten dollars to forty dollars per meeting. The legislation that was passed at the last session made this uniform throughout the state. It provided for a payment of thirty-five dollars a day with a maximum of twenty-four days per year per diem unless an emergency arose, which has to be declared by the governor. In that case, why, they are able to meet as often as they deem necessary. Another bill provided for fiscal control which was sometimes, according to the newspapers, has been abused. It now has to be approved...the fiscal control is vested in your division of administration here in Baton Rouge. It's just the same as all other government agencies. We have, as a Committee on Local and Parochial Government, we think that we have a good article. We have shortened, if to some degrees, we only have six articles included in this now. Under the old constitution, it required many pages pertaining to the levee districts.

Amendments

Mr. Poynter First amendment sent up by Delegate Nunez as follows:

Amendment No. 1. On page 23, line 26, after the word "off" and before the word "shall", delete the words "such districts" and insert in lieu thereof the words "each district".

Amendment No. 2. Page 23, line 27, after the word "district;" change the semicolon to a comma and add the following: "as provided by law".

Explanation

Mr. Nunez Mr. Acting Chairman and gentlemen of the convention, what this amendment does is to make it clearer how the members of these levee districts shall be appointed, and as you saw, it simply provided as "they shall be appointed as provided by law." The present constitution is lengthy on the appointment of levee board members. It provides that each legislator, each Representative and each Senator, shall recommend or nominate a member to the governor, and he shall pick from a panel of names recommended by the various legislators. But the drawback on that one is it is lengthy and it shouldn't be in the constitution, number one; and number two, it allows him to pick from a panel of names that was before reappointment, and now that we are in various small postage stamp districts rather than parishes, when such member in one district I don't recall, but one member of the legislature could recommend at least, if he would so choose to pick, would be forty levee board members over the other fifty-two legislators in that district. It's totally inadequate in its inequity in the present law.

So what we did...what I did simply--and I think we've got agreement from the committee; I'm not sure, but to say that each district shall be appointed as provided by law.

Further Discussion

Mr. Shannon The committee has no objection to

this amendment.

[Amendments adopted without objection.]

Amendment

Mr. Poynter Amendments sent up by Delegate Ginn. These are the Ginn amendments.

Amendment No. 1. On page 23, line 26, after the word "be" delete the word "appointed" and delete line 27 in its entirety and insert in lieu thereof "elected as provided by law"; "Elected as provided by law."

Explanation

Mr. Ginn Mr. Vice-Chairman and ladies and gentlemen of the convention, this is a very simple issue, in my opinion; it's to determine whether your levee board members would be appointed by various means and methods or be elected by the people at home. That is my objective in this amendment, having these people elect.

I don't want to get into the specifics or the mechanics of the election. I would want to see that be determined by the legislature as provided by law. I think they need that right.

But we're talking here, in my opinion, about local government, not representative or executive government. Oftentimes these appointments by the governor, or...come from recommendations by Representatives and Senators, which is O.K.; that's the process. But we are talking about local government. That's why I'd like to see these board members elected by the people at home...your local people and, therefore, your local government. The appointments can become, in my opinion, a pain in the neck for the governor. They can embarrass the governor and the...embarrass the political atmosphere of this state and the posture. I'd like to, in my little way, help this new constitution improve the political atmosphere of the state.

One of my main reasons for pushing this amendment is, if you look over on page 24, Section 45, of the committee proposal, you'll see that in Section 45 there, you...the levee boards may levy a tax on the people not in the hands of mills, give mills on the dollar. In other words, the board members could tax these folks annually. I'd like to see those people have a voice in electing these people to this board that might be taxing these people. I just think it's only right.

If you read a little bit further, you'll see in regards to raising additional funds. Well, the levee boards can raise additional funds, but it does say here it must be submitted to the electors. That is good. But my main reason is--not only am I fearful of this levee boards levying this tax on the people when the levee boards are appointive, not elected, I have another reason. I just think that the responsibility is in the hands of the people. I think the levee board should be elected as prescribed by the legislature, the method, but the responsibility should be in the hands of the people. I would like to see that. If you have a bad man on the board, there's misuse of funds or equipment, the man can be removed through the process of an election.

I would ask for your favorable support of this amendment.

Questions

Mr. Stinson You think by your amendment, election on that would take politics out of the levee board then, won't it?

Mr. Ginn Well, it would put the politics in the hands of the people during the campaign to elect the men on these boards.

Mr. Stinson But isn't...

Mr. Ginn The politics would be the campaign.

Mr. Stinson Isn't it a fact, though, that most

get, actually, pay per diem to cover the expenses.

Mr. Ginn. If we have a delegate who is not elected, about thirty-five dollars for a meeting... it is somewhat of a patronage job. It is a necessary job. I just favor the election.

Mr. Stinson. Well, can't you foresee if you make them elective, then they are going to increase their salary and set up retirement, and all such as that, and really put it in business that it's not intended for?

Mr. Ginn. That would have to be determined by the legislature. The responsibility there in those regards, and your concern, would be in the hands of the legislature. It could occur. But it would be the legislature's responsibility as provided by law.

Mr. Ginn. If there are some elected, I am unaware of it. It was my thought that they were appointed.

Mr. Burns. Appointed by...the governor?

Mr. Ginn. Appointed by the governor?

Mr. Ginn. Appointed by the governor, and it's my, also, knowledge that sometimes recommendations of the area-legislators-which is understandable. But the governor makes the appointments, to my knowledge.

Mr. Toomy. Mr. Ginn, wouldn't you think that it would be better to allow the legislature to provide whether they should be appointed or elected in the future rather than to locking into the constitution that it would be one or the other?

Mr. Ginn. No, no, because it's just my personal opinion that...put that responsibility in the people. I want them elected. I wouldn't want to see the legislature determine their future.

Mr. Toomy. As I understood the position of our committee, we didn't want to make the determination, or lock it, in whether it would be elected or appointed. We were most concerned that it would be residents of the district, whether they are elected or appointed and not to negate the legislature from allowing appointments. You understand?

Mr. Ginn. Yes, I understand. The option is there. The committee proposal has that option. But I'm just...the option is good. It's a change; it's a better change. But I'm still for the election.

Mr. Champagne. Mr. Ginn, "as provided by law," but the law could say we are going to give you two names and then they'll be elected from those two, could it not?

Mr. Ginn. No, sir, I would think that you would have to have qualifying papers and you'd have to have a campaign. That would be my opinion.

Mr. Ginn. Very much for your amendment. I am concerned, however, about the committee's language in this section in that it states the legislature may provide for the consolidation, division, or reorganization of existing levee districts or create

or elected from residents of such districts." Obviously, the "however" language can only refer to such districts as have been consolidated, divided, or reorganized. It does not apply to the existing districts. Do you read it that way?

Mr. Ginn. Well, I think I know what you want to do. I think as along as we have small levee districts, it's probably alright. But suppose, just suppose that the DeBlieux amendment doesn't pass so that the legislature can't abolish levee districts, but it can consolidate them. So it decides they only want one levee district so they consolidate all levee districts into one statewide levee district. Then we are going to have to have a statewide election for levee boards, wouldn't we?

Mr. Ginn. Well, O.K.

Mr. Chatelain. Delegate Ginn, what would be your idea as to terms of these elected periods, for these selected people?

Mr. Ginn. Well, again, it would be determined by the legislature. Possibly a four-year term...or something of that nature. But it would be determined by the legislature. I don't want to get into that field with...

Mr. Chatelain. In other words, the small levee districts, you'd want them all elected, regardless if they needed to be elected or not. Is that correct?

Mr. Ginn. That would be my opinion, yes, sir.

Mr. Chatelain. Thank you.

Mr. Newton. David, I think I know what you want to do. I think as along as we have small levee districts, it's probably alright.

But suppose, just suppose that the DeBlieux amendment doesn't pass so that the legislature can't abolish levee districts, but it can consolidate them. So it decides they only want one levee district so they consolidate all levee districts into one statewide levee district. Then we are going to have to have a statewide election for levee boards, wouldn't we?

Mr. Ginn. Perhaps, but of course I'm not taking issue with the DeBlieux amendment at this point. That's not my concern.

Mr. Ginn. How are the electors to evaluate the performance of these people once they are elected? If you want to evaluate the performance of your school board member, you can look at the curriculum, the hiring policies, and that sort of thing. The city council meets and passes ordinances every week. The mayor walks around, holds press conferences, and that sort of thing. But how do you evaluate the performance in the office of the levee board member? What are your criteria?

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Mr. Ginn No, no, I did not. I would certainly favor board members being residents of the area.

Mr. Juneau The only point I wanted to make, if you adopt your amendment, that could conceivably happen.

Mr. Ginn Well, draft an amendment right over there.

Mr. Juneau No, I quit about three months ago, thank you.

Mr. Ginn I understand that, and I agree with you there.

Further Discussion

Mr. Brown Mr. Chairman, ladies and gentlemen of the convention, I rise to very strongly oppose Mr. Ginn's amendment to elect levee board members. I wish, if you are uncertain about this, that you would go to any delegates in this convention who live in areas that have been heaviest hit by flooding. I'll tell you, I think I can speak from some authority because I represent, as a Senator, the area that was probably as hard hit as any area in the entire United States during this most recent flood. Talk to Mr. Perez from the area he comes from, and talk to him about the importance of these particular levee boards and what they do in times of flood. I don't think this is an area where we could afford to politicize the process, let someone run for office--the fellow that's got the money, or the fellows who can hustle the most votes--to get out and be on these levee boards. If you look at levee boards, and I have to speak from my own experience, up throughout all of north Louisiana, from the entire Monroe area--all of northeast Louisiana--you will find that most of our levee board members have served for years and years. These are gentlemen who in most...if you'll...what the speakers have said before, I think they up until this year, made ten to fifteen a month. I think now they make twenty-five or thirty dollars a meeting. They are limited to meeting twice a month. Up until this year, they could only meet once a month. Now, who's going to run for an office like that and expend great sums of money for a position that meets once a month or twice a month? What are we getting ourselves into?

Let me tell you, I stood by my house and looked at the Mississippi River come up foot by foot each day during this recent flood, and it scared the devil out of me. I'd hate to see us politicize the process till we start making everyone run for these particular positions. I think we've got in this committee proposal that is just or to appoint. If you want to elect someone to a position, that's fine, in your particular levee district, if you think that's the way it should be. But there's lots of levee districts that have outstanding personnel who have served for years, who have a great deal of experience, who want to leave the thing the way they are. I think we'd be making a very serious mistake to start electing levee board members throughout the entire state.

In the proposal it talks about consolidation. I think one of the questions were raised: What happens if we consolidate a bunch of these levee boards: are we going to have people running statewide to control the levee boards? I think it's just too important to start electing people to. I'd like to see us leave it the way it is.

Questions

Mr. Mire Senator, in your experience in the recent flood, didn't you find, though, that the most meaningful decisions that were arrived at during this time were really decided by the Corps of Engineers and by the Department of Public Works, when it was really meaningful?

Mr. Brown I don't know what you mean about meaningful, Mr. Mire. When the levee's about to break,

when the main line levee is about to break, it wasn't the Corps of Engineers or someone from the Department of Public Works who were out there day in and day out. You mentioned the Department of Public Works, and I think what you are getting at is: should we possibly consolidate all levees and let the Department of Public Works take over? I think that's what you're trying to get at.

Mr. Mire No, I....

Mr. Brown Let me finish commenting. I'm Chairman of the Joint Legislative Committee on Public Works. The Department of Public Works has a very small budget. They have no manpower whatsoever. It's those levee board members who day in, day out, take care of the caretaking procedures that keeps those levees in operation.

No, it's not. It's the levee board members out there on this job who, up in my area, that kept our flood area from breaking.

Mr. Mire Well, as I remember in my area, particularly along the Atchafalaya Floodway area, that the decisions made as to how high the levee would be and what work would actually be performed, this was done by the Corps of Engineers in just about all cases. You mentioned they serve at hardly no pay. Did you know that, in my area, this is one of the sought after political plums?

Mr. Brown Well, that's been one of the problems with our levee boards, Mr. Mire, because some members have been abusing this thing. Possibly in your area there has been some abuses. There's never been the slightest hint of any kind of abuse up in my two levee districts in the area that I represent. If you've got a wart on your nose, you don't cut off your head, you take care of the wart. You know what I mean? So...what I'm saying is, do we abolish the whole thing just because there are some abuses down in your area? There have been no abuses up my way. None whatsoever.

Mr. Mire Well, I agree that we shouldn't elect them. However, I agree that it should be in an area where there could be...administered to properly.

Mr. Brown All right. Your point's well taken. I think this particular provision allows for consolidation. It allows for that. If later on down the line we want to consolidate, abolish, and fund the Department of Public Works to take the thing over, fine. But let's don't get into big election right now for all these members and get completely out of hand.

Mr. Roemer Senator Brown, did you say that levee boards were too important to be elected?

Mr. Brown No, I didn't. Those are your terms, Mr. Roemer. I said that levee boards are too important to be politicized in terms of letting someone hustle for the job, in consideration...such as that, not too important to be elected, no, not whatsoever.

Further Discussion

Mr. Stinson Mr. Chairman and fellow delegates, I wish to urge you to oppose this amendment. I've had experience with...there are two in our parish, north and south Bossier Levee Boards. I am concerned about the way, even in consolidation, it says that "the members will be appointed from the district." If you create a new district by consolidation, it can end up that the north levee board district in our parish wouldn't have to have any. But, still, from the election standpoint, all of them could be elected from one portion. As you know, the election laws in this constitution and the interpretation by the federal courts, a person from New Orleans, if they wanted to try to get a job in some of the districts that have the most money, all they'd have to do is go there and register. In thirty days they could be elected and

never even live there--and get elected, spending money, knowing, putting politics in it. This, as the other speakers have said, is a job that used to be and still is an honorary job. Usually, they try to give it to the people mostly concerned.

At one time, it was either someone in a city or town that was involved in bank protection, or levee protection, or the agriculture people, the farmers who are subject to overflows, I feel that this should still be considered as an honorary appointment. It's a position that was in the past. The get the expense money in most of our districts. It's a very important matter and should not go into politics. Politics are fine, but when you run for something, and spend money to get elected, that doesn't pay a salary, something's wrong. You are going to try to make something out of it. Let's leave it to the city or the private. Someone said, "If the government wouldn't make the appointment." Well, as far as I am concerned, the governor certainly would try to please the people in that district and appoint someone who was responsible. Let's do not elect them. If you do, you are going to start something that can't be stopped, and it will only hurt the purpose that they are in existence. Please, let's vote down this amendment. Don't elect anyone to a job that should not come in that category.

Mr. Womack Mr. Chairman, members of the convention, I want to rise in opposition to this, and I'll join Senator Brown in the statements that he said that we have two levee boards in our district. We have one levee board in our district. At the next election, you don't know who you are going to elect. Each four years, or each eight years, when you have a change in the gubernatorial office, quite often you have new levee board members, but they still will remain substantial property owners who have a vested interest in seeing that that levee is maintained.

10 This year when we got into high water troubles--
11 it looked like we were really in trouble--our levee
12 board members rode those levees day and night with-
13 out compensation in order to try to see that every-
14 thing was protected. So I would urge you to leave
15 the levee boards alone; let them stay appointed;
16 and if we've got problems in areas ~~that are~~ ~~the~~ ~~the~~
17 the problem areas. So I'd urge the defeat of this
18 amendment.

Mr. Roemer. Mr. Acting Chairman and fellow delegates, I didn't plan to speak on this amendment, although I support it and say so proudly now. I felt that the need was so obvious that it didn't require much speech-making one way or the other. But it seems like when you put a little smoke in the barn, some of the varmints start running out. I think that's what this amendment is for, Mr. Ginn. In his youthful enthusiasm and his belief in democracy and his belief in the elective process, has put some smoke in the barn. I'll tell you

who are against this amendment, and want to keep
the present system. The question of the present
appointment in their district is a political plan.
Now who makes those appointments? Who would have

point. That's not right, and I know it's not right. Now those who oppose

What kind of different politics is it to have the nothing but help a governor in my parish--or have a Representative elected to represent...to appoint, or a Senator elected to be a Senator to make these appointments?

"I say it is too important to politicize in the
 buck rooms, in the smoky rooms, and from hand to
 mouth, or from governor to a friend. I think it is
 too important than that. Look at the power we
 have given these levee boards. Look at the oppor-
 tunities they have provided for graft. Look for
 a parish like mine that lies along the narrow banks
 of the Red River. It is an important job where I
 come from. It is an important job. I submit to
 you that by making it elective, we haven't put it
 into politics, we've cleaned the politics up-stem-
 ing it because it's a public job. I think that
 you, Buddy Roemer, and you, citizen *r*, have the
 same amount of influence on who is your levee dis-
 trict member. That is, you have one vote, one vote.
 I just cannot see, for the life of me, the people
 who say, 'Well they'll spend money.' They'll have
 money for one job, or they'll have money for two.
 How do you think they get appointed now? They spend
 money in one form or another, not to run for the job,
 not to pay a guy like me, but to support a governor,
 or to support a Senator, or to support a Represen-
 tative. How do you think they get appointed? Let's
 use our heads. They get appointed because they
 supported somebody, or they are a friend of some-
 body.

All too often, I'm afraid they don't get appointed because they understand the job. I'm afraid they don't get appointed because they care. I'm afraid they don't get appointed because they want to provide meaningful service. All too often, the reason they are not appointed is that they are not well supported. All Mr. Ginn, in his youthful enthusiasm and, I think, quite clear vision, has done, is said "if they are so important to be constitutionalized, they're *damn* sure important enough to be elected by you and by me." I don't see how we can help but support amendments that are in the American Constitution. In Bossier Parish, people this important are chosen by us.

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generation that you can get in this. Most boards do not have the personnel where you can do any payroll padding, and that's been taken care of by legislation to stop that. Now there are some twenty-five levee boards in this state. Three or four of these boards have been criticized in the past. That criticism has been taken care of through the last legislation that we passed to correct that situation. I can't see, for the sake of me, how you could get people to go out and run for something like this over a large area. Now some of this would be parishwide in most of your parishes—a parishwide deal. Up in our area, you wouldn't run parishwide because the levee district does not embrace the whole parish, and there would just be a portion of the parish. But I cannot see, for the sake of me, and the committee debated this at length, and we thought about it, both on the Levee Board Study Committee, of which I served, and also this Committee on Local and Parochial Government. It was our opinion that it be best to let the legislature adopt the laws that would govern the appointments. Under the present law, levee board members' appointments are locked into the constitution. A governor appoints a levee board member but cannot get rid of one that levee board member during the time of his office. The only way they can be gotten rid of is to be addressed out of office by the legislature.

Now, what we are endeavoring to do here is put this in the legislature and keep it appointive. Let the governor appoint them, but let the governor have the right to remove that levee board member if he doesn't do his job. I don't believe that you can get a plum out of this. I know...I'm not asking for it not to be elected because I'm a legislator...I am a legislator and I am interested in levee boards because I know what they do. I know that most of the boards in this state operate efficiently, and they are honest, hard-working people. Most of them are qualified people. That is our reason for wanting to go to this process of letting the legislature dictate how they shall be selected, and give the governor the power to appoint these people. If they do not perform, then he can eliminate those people without having them addressed out of office.

Questions

Mr. Roemer Mr. Representative Shannon do you realize that the legislative auditor's report, no less than seven times last year, pointed out dollar abuses among levee boards and levee districts in this state amounting to thousands of dollars, not seventy dollars a month. Do you realize that?

Mr. Shannon But we have had legislation to correct that situation, Mr. Roemer.

Mr. Brown Mr. Shannon, do you realize that those abuses are only in a couple of boards in south Louisiana and that the boards up in north Louisiana did not have one iota of scandal in the whole history they've been operating. Are you aware of that?

Mr. Shannon I'm not. The last person to say where there were, that there were only five on three board out of twenty.

Mr. Stinson Mr. Shannon, don't you know investigations also showed that a lot of illegal stuff was going on right in the capitol out of the office of the Director of Administration, and he had to fire those people that were crooks? You realize that, don't you?

Mr. Shannon I read that in the paper, yes, sir.

Mr. Stinson I'm sure it's so, and Mr. Roemer, Sr., was quoted, wasn't he? That had been going on for some years, hadn't it?

Mr. Shannon Apparently so, Mr. Stinson.

Mrs. Warren I'm not speaking for or against, but

who pays back all that money when it's messed up?

Mr. Shannon We have due process of law that they can go through and be prosecuted, and the money can be recovered in that manner, Mrs. Warren.

Mrs. Warren I hope so. I really do.

Further Discussion

Mr. Lowe I urge your defeat of this amendment.

Mr. Chairman and fellow delegates, I merely rise to make one point, and then rise and to oppose Delegate Ginn's amendment. I doubt seriously if you can really appreciate the problems of the levee districts unless you've lived behind a levee, unless you've seen a farmer go out and borrow a half a million dollars to invest in a crop, or fifty thousand dollars, if that's large to him, or ten thousand or five thousand. When you ride right over that bridge and see the levee rising...the river rising to the top of the levee, I don't get up here to get emotional, but I tell you, it does something to you. All of you people that have sat in this position for the last week or two and were worried about property rights and the right to own property and worried about protecting that property, this is the time for you to get serious and start listening and not try to chop up the business of protecting levees too much. There's not too much I can tell you about the way the system works. I've heard at this microphone discussed that the engineers, the U.S. Engineers, take care of everything. Well, I submit to you that they have a lot of expertise, but they are not there everyday. The people on the levee board know that the engineers have expertise and they are there everyday. They stay in touch with the engineers and they try to carry out the wishes of those engineers. I submit to you that we are going to deliberate this levee district thing a great deal. The only thing I can ask you to do is to take it serious, those of you that are worried about property, to help protect what we have today. We know that that works. If there are some inequities there, what's proposed in this constitution gives a framework where those inequities can be straightened out.

So, I hope all of you who don't live behind a levee, and have the threat of being washed out every year, will sit and try to put yourself in the position of those that are in that position. I ask that you vote this amendment down and try to leave the levee districts in the position that they are in today.

Questions

Mr. Fulco Mr. Monday, could the police jury or the Public Works Department assume these responsibilities and perform just as well as levee boards?

Mr. Lowe Well, Delegate Fulco, I can tell you that the police jury can take over the responsibility, but I don't see any possible way that they could perform the duties as well. This is a specialized duty and it doesn't fit into the general framework of what police jurors are normally used to taking care of. I have people on my levee board, in the Atchafalaya Levee Board, that's been there thirty or forty years. These people have been exposed to the dangers of what can happen. I'm happy that they are there.

Mr. Newton "Monday" do you think that this Constitutional Convention can cure all the ills in the levee boards?

Mr. Lowe Mr. Newton, there is no way in the world. I agree with you that what we have in the levee board and I agree that what's in this article, gives a framework where they can be cured.

Mr. Newton Now, know, I do agree with you. Don't you think that the only way these kind of problems can be solved is through the legislature?

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Commission--the arm of the U.S. Corps of Engineers of whom the levee districts operate in the construction of levees, had this to say, "Based on many years of civil works experience, the system of a coordinated state and local effort in Louisiana is the best I have seen anywhere. We in the Corps feel that the local cooperation required by law is being well provided by the Louisiana system of coordinated state and local entities, whose principle concern is the flood protection system." What General Noble meant by that is that the Department of Public Works acts as the advisor to all the various levee boards, but that the levee boards throughout the state take care of the many, many functions which are needed to take care of levees day in and day out. Let me give you an experience as to what happened in my parish during this last high river. I was informed about two o'clock in the afternoon that half of our...of a levee section, about three hundred feet in length, had suddenly fallen into the river. A similar situation happened up at Montz, a little further upriver, except it was the failure and not the levee which had caved. The Department of Public Works showed up the next day. The U.S. Corps of Engineers showed up several hours later, after our local people were on the scene, and shook their heads and walked away and said "You can't stop it." We, the local people, because we are the ones whose lives and properties had to be protected, plucked in and said "It will not happen." We fought for about eighteen to twenty-four hours until we finally stopped the cave. We stopped thousands of our people from being inundated. We were told by the Corps of Engineers we couldn't do it. We weren't even told by the Department of Public Works; they didn't show up until after we had stopped the cave. The message that I'm trying to give you is that after hearing all of this testimony, the committee almost unanimously came to the decision that these levee districts must continue and must continue in local hands. If the legislature is given the authority to abolish levee districts, it then would be giving the authority to consolidate those functions into the Department of Public Works. I tell you even the Department of Public Works itself has said that it would be impossible, that they could not take care of the many thousands of miles of levees throughout the state, and also take care of the many other functions which they have to undertake. So I say to you that the reason that the Legislative Committee did not include the abolition of levee districts in this provision was because of the fact that they wanted to be sure that these levee districts would continue to exist--and under local control. I might say to you that if, for any reason, any levee district becomes obsolete and the functions are no longer needed, is not a great harm is done if the statute stays on the books with respect to that levee district. But a great deal of harm could be done if these levee districts were abolished and placed into one central agency. I, therefore, urge you to defeat the amendment.

Questions

Mr. Flory Mr. Perez, under the program that has just been announced in the Federal Register, by the federal government, where the local people are going to have to assume the cost of construction of levees, drainage, this sort of thing--if it becomes law--wouldn't you then need some vehicle on a local level to do this in the future, like the levee board?

Mr. Perez There is no question about that. I might also tell you in our parish, for instance, as a result of the two hurricanes--Camille and Betsy--that the Corps of Engineers is enlarging over one hundred miles of levee in my parish. The tremendous problems in dealing with all of the local people with respect to the compensation that is due to them, with respect to moving their improvements, with respect to the operation of the recently adopted Federal Uniform Relocations Assistance Act, all of these functions are taken care of by the

local levee board, in addition to those functions of caring for the levees and constantly inspecting them to see that we don't have levee problems. There are so many functions which are taken care of by local levee boards that even, as I have said before, the State Department of Public Works has agreed that that function would be impossible for them to undertake.

Mr. Lennox Mr. Perez, how else would rights-of-way be provided for the U.S. Corps of Engineers if a local levee board or similar organization was not constitutionally authorized to do such projects?

Mr. Perez Well, I know in our area the problems that we have even having the local contact with the people. I would assume that the Corps of Engineers could hire people to take care of these problems. It would be a problem as General Noble pointed out in his remarks, which I have before me, which would almost be impossible for them to take care of.

[Previous Question ordered.]

Closing

Mr. De Blieux Mr. Chairman, ladies and gentlemen, let me point out something to you. My amendment does not abolish one single levee district. Let's get that clear and straight. I'm not advocating the abolishing of any levee district. The only thing is, I say that in some future years--and we ought to be putting together a document for future years, not for just now, but in the future--that if it ever becomes desirable that the legislature abolish a district, a levee district, they could not do it. You might have one that may become obsolete. It might have property and money. Are you going to let it just sit there because the legislature cannot abolish it, if it costs too much to pass a constitutional amendment to change this? I think now is the time that we ought to just put this little one word into this particular provision to eliminate any possibility that the legislature does not have that authority. That's all I'm asking, that we have a well organized constitution to take care of our future needs. I see no harm in the world done by adding this one word into that particular provision. I ask you to approve the amendment.

[Amendment rejected: 40-64. Motion to reconsider tabled.]

Amendment

Mr. Poynter This is the De Blieux amendment. Amendment No. 1. On page 23, line 28, after the number and punctuation "(2)" delete the word "any" and insert in lieu thereof the following: "Subject to the provisions of Paragraph (1), any"

Explanation

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, in this particular paragraph there is a provision that if any levee district is located solely within one parish, that it can be consolidated in the local government. In that particular provision, in my opinion, it could never be consolidated, divided, or merged with any other levee district regardless of the needs. I just wanted to add in the words in the beginning of this paragraph to allow that if the need should happen to occur at some future time. It's just "Subject to the provisions of Paragraph (1)" which gives the right to the legislature to consolidate, divide or merge a levee district. I don't think you can do that if you leave the paragraph as it is right now. I ask your approval of the amendment. I believe there is only two levee districts in the whole state that fall within that category.

Further Discussion

The convention, Paragraph (1) and Paragraph (2) are virtually unrelated paragraphs. That is that Paragraph (1) talks about the legislature providing for the consolidation, division, or reorganization of existing levee districts. The second paragraph was designed in order to provide more efficient operation on a local basis if you have a levee district situated entirely within the boundaries of one parish. If there is a vote of people, and in the vote of the people both within the district and within the parish vote in favor thereof, that that levee district could be merged or consolidated into that particular parish. I just do not understand what the words "Subject to the provisions of Paragraph (1)" mean, because once it's consolidated into the parish, then (1) would not apply. I just don't understand its meaning. I don't think we need the amendment. I just don't understand what it means. I, therefore, urge you to reject the amendment.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Lennox]. On page 24, between lines 1 and 2, insert the following paragraph: "...if you are going to follow there were two Lennox amendments distributed; this is the longer of the two:

"(3) The authority of levee districts to expend its revenue shall be limited to drainage, flood control, hurricane flood protection and administrative expenses. Other powers and functions of levee districts now or hereafter authorized may be exercised provided that the revenues derived from such other functions are sufficient to pay the complete cost thereof. A local governmental subdivision, by ordinance adopted by it, may assume and merge into itself the authority to exercise such other powers and functions of a levee district exercised wholly within its boundaries. Thereupon, except for tax revenues, the local governmental subdivision shall succeed to and be vested with all of the rights, income, resources, jurisdiction, authority and powers of such levee districts required for the exercise thereof."

Explanation

Mr. Lennox Mr. Chairman, fellow delegates, this amendment, as you might readily note, adds Paragraph (3) on page 24 to the section. Now, let me preface my remarks very briefly by saying that, for better or for worse, I am the immediate past president of the Board of Levee Commissioners of the Orleans Levee District, having served as its president since between February, 1969, and May of 1972. Now, during my term as president of the levee board I advocated to the public and publicly pronounced my advocacy of the amendment that I am placing before you right now. The time is now to make substantial changes in the manner in which the Board of Levee Commissioners of the Orleans Levee District conducts its business in the public interest. The time was then, in 1969, when I first started talking about it. This seemed to be the first opportunity that the voters might have to express themselves on that subject. The eastern half of the city of New Orleans, which more commonly known to most of us at home is the Ninth Ward of the city of New Orleans, has relatively no hurricane protection. The only hurricane protection that exists from Parish to Parish is the Mississippi River Gulf Outlet, which is 10 feet above mean gulf tide. Now the family hurricane that hit the Mississippi Gulf Coast brought with it a 10-foot surge. The time is now to make an empirical calculation, figure out what that would have done to New Orleans East and to the upper and lower Ninth Ward, it simply bears out the absolute

leaves Levee Board to hurricane protection. Now, my amendment simply mandates the Orleans Levee Board to address itself to its constitutional responsibility.

Parish from hurricane tide. Now, so you will know what I'm talking about, it would take the levee board out of a variety of businesses which it now uses tax revenues to support. They are the New Basin Canal properties—which, incidentally, were purchased from the Department of Public Works of the State of Louisiana at a cost of some two hundred and fifty thousand dollars. Along the new basin canal you will find bars, restaurants, a V.F.W. home, service station and marine repair facilities, all of which are leased by the levee board to private tenants; nearby you will find the Orleans Marina. Those of you who live in or close to New Orleans will remember what a controversy was stirred up when I suggested that those tenants who owned yachts and boats, and used that facility, should simply pay the fair market value as rental to a public agency. In Louisiana, since 1931, that has been a no-no. No one should pay fair market value to a public entity when everyone should pay it to private entities. That simply doesn't make sense to me. There were seventy-five thousand dollar boat houses in the Orleans Marina, with seventy-five thousand dollar yachts parked therein, with an annual rental of less than three hundred and fifty dollars accruing to the public for which it would handle its hurricane protection business. The Orleans Levee Board owns, operates, and maintains 6.2 miles of city streets of the city of New Orleans, that being Lakeshore Drive from the New Basin Canal to the Seaboard Bridge. There on you will find four separate bridges, one of which is a high level bridge—the Seaboard Bridge—which was built by the one-third Orleans Levee Board Fund. Now how the levee board ever got conned into getting in the bridge building business, I really don't know. But, the dock board, the city of New Orleans and the levee board each put up one-third of the total cost which ran into millions of dollars. One of the frauds that I can not comprehend and continues to exist today, about thirty yards south of the Seaboard Bridge is a Southern Railway Bridge, which is a grade level bridge. A group of bridge tenders operates the Southern Railway Bridge twenty-four hours a day, seven days a week, while thirty yards away, the Orleans Levee Board maintains a similar crew, three hundred and sixty-five days a year, twenty-four hours a day, to allow that bridge to be opened on a frequency of about seven times a week. I tried to work out an agreement with the Southern Railway System where we would have a submarine cable between the two bridges, they would operate our bridge, and we would operate theirs a year, or seven times a week. That agreement is yet to have been reached. We continue to have two separate crews, one around the clock, three hundred and sixty-five days a year, and the other one around the clock, three hundred and sixty-five days a year.

For marine traffic, the time is now to make an empirical calculation, figure out what that would have done to New Orleans East and to the upper and lower Ninth Ward, it simply bears out the absolute

sel; it travels at a speed of thirty-two knots and that's moving aly on the water. It is the ashly appointed. Although I have never been on the rescuer, I have been close enough to it to know that it's quite a fancy piece of equipment. I don't see how that has anything to do with hurricane protection. Now, the late governor Huey Long, for whatever reason he had at the moment, mandated by constitutional amendment the Levee Board to manage itself in the police business within the police authority of the city of New Orleans. When I joined the Orleans Levee Board in February of 1969, I had a police arm of some sixty-six human beings--only one of which had ever received one day's professional training as a police officer. Now, you use your own imagination as to what those people were used for theretofore. The Orleans Levee Board owns and operates at a substantial deficit, without giving any consideration to amortization of invested capital, the New Orleans Lakefront Airport. Now, let me stop there for a moment. New Orleans Lakefront Airport is an absolute necessity to the city of the city of New Orleans. It is the principal general aviation airport in the area. Now, general aviation is differentiated between air carrier operations--the air carrier operations being the operations that most of you are more familiar with; those are the commercial airlines. Now, the general airport handles corporate and private aircraft and handles the training of people who wish to learn to be aircraft pilots and the like. I submit to you that the New Orleans Lakefront Airport is an absolute necessity. But I don't see how you can, in good conscience, say that you ought to be taking dollars that should be invested in the protection of the citizens, and the property of Orleans, and putting it into an airport when the city of New Orleans has a bureau, or a board, called the New Orleans Aviation Board fully competent to do just that. Now, I made an attempt at putting these two together during my three and a third years, but to turn around what has happened since 1927 with the Orleans Levee Board, and say, "Well, it couldn't be done in three and a third years. Public relations, display advertising--these things have been openly criticized by the legislature auditor in recent years. The absolute waste of taxpayers' funds in developing thirty-four page color brochures simply telling you what good guys the members of the Orleans Levee Board were. The Orleans Levee Board, in addition, owns and leases by public bid, the Pontchartrain Beach Amusement Park and several concession stands along Lakeshore Drive. It owns and operates...or owns and leases the shopping center known as the West Lakeshore Shopping Center. It owns and leases at a substantial annual loss the Lake Vista Community Center, located in the middle of the Lake Vista subdivision. Much to my amazement, it now owns and/or leases and/or operates a variety of airplanes and helicopters, for what reason I simply do not know, when the coast guard is close at hand. If helicopters or rescue vessels are needed, it seems a simple call to the coast guard would produce the desired result. What I'm submitting to you, gentlemen, is this particular amendment mandates the Orleans Levee Board to use its tax revenues for the purpose of protecting the lives and property of the citizens who pay those taxes. It further authorizes the city of New Orleans to govern local governing authority to assume the cost to accept those who are operating protecting devices which the levee board is operating in most cases, at substantial losses.

I don't want anyone here to construe anything I have said to be any criticism of any prior president, or present president, or future president, or future member of the Orleans Levee Board; it's certainly not intended to be that. But, a recent inquiry--and I haven't been back since I resigned in May of 1972--indicates to me that the Orleans Levee Board has, since May of 1972, not dedicated or committed a single new dollar to any hurricane flood protection project. Now, that's eight million dollars later and two years later. We are still in the airport business; we are still in the

amusement park business, but we are yet to get ourselves dedicated to the protection of the citizens of our city. I submit to you that this amendment is in the best interest of the citizens of the city of New Orleans. I urge your adoption.

Questions

Mr. Jenkins Mr. Lennox, I just want to thank you for bringing this information to our attention. I think it's truly amazing. I think you have a great amendment, do you know?

Mr. Lennox Thank you, sir.

Mr. Lowe Mr. Lennox, I just wonder if you could comment briefly on what the legislative auditor has said about the irregularities that you have mentioned and what has been done about them as a result of his recommendations, if any?

Mr. Lennox Well, unfortunately, all of the legislative audits usually will lose an audit of the president or a resignation of a president under pressure. I think the last criticism brought by the legislative auditor was a similar case, where he criticized very strongly the use of public funds to simply run whole page ads in the local newspapers to say what guys the members of the Board of Levee Comm... good guys the Board of Levee Commissioners were. He criticized that use of public funds as being an illegal use and an improper use and I agree with that.

Mr. Lowe Well, the point is, has he criticized any of these other irregularities that you have mentioned?

Mr. Lennox Some of them continue at this date, Mr. Lowe, as nearly as I...this particular brochure, I think, has been produced within the last two years.

Mr. Lowe No, but all of the other irregularities. Has the legislative auditor commented on those irregularities?

Mr. Lennox Well, I don't know specifically what you have in mind. I would like to...

Mr. Lowe Well, the operation of the businesses at a loss, the building of the marina, the...where the boats are being rented for three hundred dollars a year, and these which seem clearly irregularities that would have been brought out by the legislative auditor.

Mr. Lennox They are, indeed, Mr. Lowe. But, what we are trying to do, and the legislative auditor could not render any criticism there for the simple reason that the Orleans Levee Board, under its present constitutional structure, has the authority to do all of that, to give it away. Now, what I'm saying is you have an opportunity now to correct all of the ills that have been created since 1927.

Mr. Lowe Well, the thing that confuses me, Mr. Lennox, is that you say we can give away public funds; I don't get my question answered, but I'm sure you believe that. It's difficult for me to believe that you can give away public funds, or misappropriate public funds, without coming under some criticism or some scrutiny from the person that is set up to police the financial affairs of the State of Louisiana.

Mr. Lennox Well, I was criticized by some of the people who were the holders of this lease because I was demanding that they pay a reasonable rent. To answer your question, as far as I know, the legislative auditor has brought no criticism to bear on the levee board for that practice.

Mr. Shannon Mr. Lennox, isn't the meat of your proposal in sentence (3), which you have not mentioned--if you did, I didn't get it--where the

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over the Orleans Levee District?

Mr. Lennox Mr. Shannon, I think I...in preceding your question, I did mention it; perhaps you did not read it. But, there seems to be some popular misunderstanding--the city of New Orleans may not, under any circumstances, under this amendment, take over the Board of Levee Commissioners of the Orleans Levee District as it now exists. If you read that carefully, it gives the city of New Orleans, by vote of its elected representatives, the right to assume these non-hurricane protection functions, which are not self-sustained.

Mr. Shannon Under the present constitution, the Orleans Levee District is under the present constitution. In our proposal, it would be eliminated from the constitution and relegated to legislative action. Here, if I read this right--and I can read it no other way--that you are only providing that the city of New Orleans, by simple ordinance, can absorb the Orleans Levee District.

Mr. Lennox Well, that's not right, Mr. Shannon. I suggest you have to read it again. Read carefully the words, "exercise such other powers and functions" which seem to appear on the sixth line from the bottom.

Mr. Henry You have exceeded your time, Mr. Lennox. Now, we are going to have to sort of slow this thing down, it looks like, because it's five o'clock.

Personal Privilege

Mr. Burson Mr. Chairman, fellow delegates, I asked for personal privilege today because I know you all have all read this editorial that has been passed out here. I wanted to say that it was with heavy heart that I realized that our complicated legislative procedures in this body were beyond the understanding of some of the people who had been assigned to cover this convention, who apparently have never heard of the old legislative technique of loading the wagon to kill a bill that you are against, although Mr. Moses, in the Morning Advocate, did a good job of explaining that the day after we had the debate on the firemen and the policemen. In order to perhaps help some of the reporters here whose personal viewpoints of the issues may be clouding their understanding of the process, I would like to take, at this time, the opportunity of awarding to a particular reporter a copy of the Times-Picayune, the Shreveport Journal and the States Item, so he can look at a good newspaper and learn what's going on in the convention.

Announcements

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Thursday, October 4, 1973

ROLL CALL

[*Mr. Lennox indicates present and a quorum.*]

PRAYER

Mr. Stovall Let us pray.

Eternal God, Father of us all, Who in the beginning, when the earth was without form, a void and darkness covered the earth, said, "Let there be light," and there was light, and there was order, we pray that You'll give light and order to us; and Who, when Your ancient people were in bondage, You opened up for them a way into the Promised Land, into a new day and a new future, we pray that You will open up for us, as a state, a new possibility, a new future. Increase our faith in You, in one another, and in ourselves, and enable us to make the decision to be Your people and to move forward. For we offer our prayer in Your name, as the One Who was and is and ever shall be. Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17, introduced by Delegate Perez, Chairman, on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee:

A proposal making general provisions for local and parochial government, levee districts, and ports, the financing thereof, and necessary provisions with respect thereto.

The status of the proposal is that the convention has adopted, as amended, the following sections, being Sections 1 through 30, with these exceptions: Sections 2, 4, 10, 20, 25 and 30, which the convention has voted to delete from the proposal. In addition, by motion of Delegate Perez and adopted by the convention has passed over, at the present time, consideration of Sections 31 through 43 in the proposal; as a consequence, presently has under its consideration Section 44, dealing with levee districts, some amendments to which have presently been adopted, and, in particular, at the present time, under discussion on the floor is the Lennox proposed amendment, adding a proposed Subparagraph 3 between lines 1 and 2 on page 24.

Mr. Henry All right. We're in the midst of the debate on the Lennox amendment.

Further Discussion

Mrs. Warren Mr. Chairman, and delegates, I don't have the expertise to stand here and talk to you as Mr. Lennox spoke yesterday. But, I do support his amendment wholeheartedly. It only takes one who has gone through a flood, and walked out of his house with water to his knees, and he would like to know what it means to have a real good levee board, and one that would do its job instead of trying to take on so many other functions. It was stated from the audience yesterday: Was Mr. Lennox trying to turn the Orleans Parish Levee Board over to the city of New Orleans? This is not what I'm trying to do, but I would like to make it perfectly clear that I'm opposed to the way that they have been conducting their business. I'm not so interested in "sacred cows" because when a cow gets to the place that she doesn't produce milk, she's only good for beef, and beef, you only eat it. I am interested in the people of the city of New Orleans being safe from floods. I'm interested in them carrying out their duties as they should be. I'm going to ask you all to think and remember back when I stood here and I

said a prayer, as I looked over this state, for many people who had lost their homes and their cattle and other things. I alone...not I alone could be in sympathy with them because many in our areas in 1965 were placed in the same situation. I got home at about nine o'clock at night to put my slippers on, and they were floating like a boat, and I didn't have anywhere to go but in my attic. So, I'm saying to you, if you think this is a problem that is only unique to the city of New Orleans--and I don't ask for any exceptions across the state--but a drowning man doesn't care who throws him a rope, so will you please think about us, when you decide to vote on this amendment, that these people would like to have their lives preferable to a levee board that does not want to do its job. If it wants to do its job, this amendment is not going to hurt it one bit. I'll yield to any questions if I'm able to answer them. If I don't, I'll yield to Mr. Lennox.

Further Discussion

Mrs. Zervigon Mr. Chairman and delegates, I rise to speak in opposition to the Lennox amendment. While the concept may be good, of restricting levee districts to levee and flood control activities, that could be accomplished under the committee proposal where it says that, "The legislature may reorganize or provide for the reorganization of levee districts." But, the Lennox amendment, as it is drawn, would leave rather a hiatus in that the levee board in New Orleans Parish would be forbidden from operating various services--and it is not too clear how sweeping that is--including bookkeeping and grass cutting and that sort of thing. The city of New Orleans would therefore, I assume, be mandated to pick them up, and it is not at all clear to me that the funds generated by some of these services would be sufficient to pick up the difference. If the city couldn't pick them up, or didn't want to, what would become of some of these services? I know that we've had some unfortunate flooding in New Orleans in the past. The levee board is at present trying to correct that. It's very difficult to provide a levee system that will keep every drop of water off of all the parishes, under any circumstance. But, let me point out to you that in the constitutional amendments that have been defeated at the polls, would be the millage that would allow these extra levees to be built--these hurricane protection levees to be built. So, it's difficult to blame the levee board, when they are only able to levy two and a half mills and all other levee districts may levy five mills, for activities that they are not able to perform because they've been defeated at the polls with constitutional amendments that would allow them this extra millage. So, I urge you, read this carefully. Do not consider it hurriedly. Give it your full consideration, and in the end, I hope you will reject this amendment.

Questions

Mrs. Warren Mrs. Zervigon, I'm not trying to force anything, but I want to know this: you mentioned the millage, and I would preferably vote for it, but under the circumstances, with all the big business that the levee board has gone into, couldn't they have made enough money to have built those levees? All of this that Mr. Lennox gave us yesterday--he says it is true and he can prove it--this is the only thing I'm going on. With all the money that they could have made through their business dealings, I think they should have had enough money to do what they needed on the levee board. I'm kind of green at this, and I'm trying to really get to the bottom of it.

Mrs. Zervigon Well, Mrs. Warren, the last time the Orleans Parish Board branched out, so to speak, I believe, was when they reclaimed land in 1954. The airport was built, I believe, in the thirties. This is not something I'm very expert

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must be spent only on levee improvements," and that's what this amendment is all about. Now, if this amendment is adopted, contrary to what you've heard, I attempted to get the advice of the counsel representing the city of New Orleans in drafting this amendment, in order that the amendment, if passed, would be acceptable to the administration of the city. I conceded to counsel for the city of New Orleans certain points in the drafting of that amendment, and I assumed, until an hour ago, that this particular amendment was acceptable to the administration in every manner, shape and form. I'm surprised to find that the amendment is not to be the case at this late moment. Now, let me say one thing: the Orleans Levee Board, if this amendment is adopted, would still be a viable agency of the State of Louisiana. Its members would still be appointed in exactly the same fashion they are appointed today: by the governor, resulting from recommendations made by legislators of Orleans Parish. Now, those who oppose this amendment simply do not want to confine levee boards to the critical business of protecting lives and property of citizen taxpayers from abnormal tides. They would have you believe that it is proper to continue to use tax revenues raised for flood protection to construct and maintain fishing and hunting camps, and to operate pleasure boats and yachts for the use of a privileged few. This, I submit to you, since 1927, in Orleans Parish, has been a tool to promote the political ambitions of those and contrary to the public interest. If you want to retain the status quo, if you want your levee boards in the airport, cocktail bar, marine business, then vote against my amendment. If, on the other hand, you want flood protection for flood protection taxes, you have no alternative than to vote yes for the amendment. Thank you for your time. I move the adoption of the amendment. I ask for a record vote.

[Record vote ordered. Amendment rejected: 46-64. Motion to reconsider tabled.]

Amendments

Mr. Poynter This one is distributed with just the name "Nunez" on it.

Do you want to be a coauthor on this, Mr. Pugh?

All right. Mr. Pugh does want to be a coauthor. Amendment No. 1. On page 23, line 26, immediately after the words "Commissioners of" and before "shall" delete the words "such districts" and insert in lieu thereof the following: "districts heretofore or hereafter created".

Amendment No. 2. On page 23, line 27, delete the semicolon "; " after the word "districts" and insert in lieu thereof "as provided by law;"

Explanation

Mr. Nunez Mr. Chairman and fellow delegates, this is in line with the amendments that we had... we passed yesterday that the committee agreed to, and after careful study of them, and talking to some of the staff, it was determined that possibly it did not do what we wanted to do—that was to create, to allow the legislature to make... to provide laws, to make the appointments to the various levee boards that are heretofore created or hereafter created, rather than those that will be consolidated. This, we believe, does what many of us wanted to do: set up a procedure whereby we can establish by law the manner in which these levee board members shall be appointed. It's similar to... it's exactly what we did before, but we weren't sure that what we did before did what we want to do now.

Further Discussion

Mr. Perez We see no objection to the amendment; it just makes it clear that it applies to existing levee districts and any levee districts that might hereafter be created. If there are no...

Questions

Mr. De Blieux Mr. Chairman, as I read this amendment—it's a kind of point of order to this—it looked like to me this is a duplicate of the very amendment which we adopted yesterday.

Mr. Perez Well, the problem, Senator, is that if the language some people are not totally satisfied with, they wanted to make it sure that it applied, that this reference applied, not only to the districts which would be consolidated, divided, or reorganized, but would also apply to all levee districts. That's the purpose for the change in the wording, and the wording is different from that which was submitted yesterday.

Mr. De Blieux It looks like to me—I just say that—that you're doing identically the same thing that you did yesterday. Maybe I'm wrong.

Mr. Perez It just further clarifies the language, Senator.

Point of Information

Mr. Jenkins Mr. Chairman, we're still having some confusion as to what amendment it is. Could the Clerk help us?

Mr. Henry Read it again, then, Mr. Clerk, if you will.

[Amendment reread.]

Mr. Perez I'm advised by Senator De Blieux now that he had the wrong amendment before him, and I don't believe he has any question about it now.

Questions

Mr. Goldman On this amendment... these two amendments we're talking about now, Amendment No. 2 is already in there. Amendment No. 1 would change a little bit, but we could do away with Amendment No. 2. I think, because that's already there. That was done by amendment yesterday. So, all that's necessary, isn't it true, is Amendment No. 1 to do the change?

Mr. Perez Well, I would then ask for a division of the question, and if the Chair will advise me that Amendment No. 2 was adopted on yesterday, then, of course, I'd urge the adoption of Amendment No. 1 and the defeat of Amendment No. 2.

Mr. Poynter Mr. Perez, if it's all right with you and the author of this amendment, I think, perhaps, an easier thing would be to withdraw this set of amendments, strike out Amendment No. 2, and then make it clear in Amendment No. 1 that it effects the deletion of the prior Nunez amendment. On page 23, line 26, delete Amendment No. 1 by Mr. Nunez yesterday.

[Amendment withdrawn.]

Amendment

Mr. Poynter It would read as follows:

Amendment No. 1 [by Mr. Nunez]. On page 23, line 26, strike out Amendment No. 1 proposed by Mr. Nunez and adopted by the Convention on October 3, 1973, and immediately after the words "commissioners of" and before "shall" delete the words "such districts" and insert in lieu thereof: "districts heretofore or hereafter created".

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Kelly and Mr. Roemer]. On page 23, delete lines 20 through 32, both inclusive, in their entirety and on page

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the investment of everybody in your district being jeopardized, you take a little bit different view. Now, this section, as presently written, gives you the authority. It sets up in the constitution the provision that these levee districts that are in effect, stay there. I don't anticipate that the Mississippi River is going to flow north; I think it's going to continue going like it is. I think they are going to continue keeping the Atchafalaya about like it is. Water is going to run down hill. It's been doing it a good many years, and you're not going to push it any other direction. There's not going to be any major need or any need for any major change in the system of levees. There will have to be some corrective measures made; there will have to be some bypasses made, maybe some shortening of channels, those kind of things. There is a provision in this proposal, like it is now, whereby the legislature can consolidate. That leaves room enough for growth factors; it leaves room for the changes that you may need as time goes on. I personally feel it is in the best interest that we leave the constitutional levee boards like they are—levee districts like they are—while this provision in there where those changes can be made as the years go on, and I see absolutely no reason to delete them. So, I urge the defeat of this amendment.

Questions

Mr. Goldman Representative Womack, do you know that I agree with you, and I'd like to ask this question so that the delegates can hear your answer to it? In view of the fact that we have to get this...number one, we have to get this new constitution passed by the general...by the citizens of the State of Louisiana, and if levee districts are taken out of the constitution, the way the press may handle this the people are going to be so concerned with what's going to happen if they have a flood between now and the time the legislature might act again, what will happen, they might get in their minds that they are not going to be provided for as far as flood protection is concerned. Don't you agree that that might be an element in whether or not this constitution is passed or not?

Mr. Womack Mr. Goldman, this...I agree with you. This is just another one of the items that it would do absolutely no good to delete it, but it would certainly give opposition to this final document a good prey to fall on. I think they could really make hay over it.

Mr. Chatelain Delegate Womack, do you realize that I support your position on this? I think this is...we're going to give a great deal of time, Delegate Womack, to provide that these various levee boards and commissions could be appointed or elected. After all this time, I think there's a great need to remain in the constitution. Don't you, sir?

Mr. Womack Thank you, Mr. Chatelain.

Mr. Lanier Delegate Womack, did you know that if we didn't have proper levees in many places in Lafourche Parish, we'd be in bad, bad trouble?

Mr. Womack I think you'd be in the same trouble 21 of us are in. In fact, I can show you some half a million, million, dollar losses up in my area, now, even with everything we have. It could be a lot worse than that.

Mr. Lanier Aren't you familiar with the fact that the United States Corps of Engineers, in testimony before the Local Government Committee, said that our system of levee boards in the State of Louisiana is one of the most efficient in the Mississippi River and Tributaries Project?

Mr. Womack The reports that I have had all the way through is that the levee system in Louisiana

has been the best maintained, the best looked after, the best supervised of any place in the entire Mississippi Basin. That's the information I have.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, it wasn't too long ago that Representative Womack stood before this rostrum and made a very good speech, in my opinion, with reference to the responsibility of legislators, and the fact that they were not people with horns on them, and you could not respect them or depend on them. Now, to have him get up here and say that just by the mere fact that the levee boards are not going to be in the constitution and that it will be tended to by legislators seemed to be a contradiction of his previous attitude. I want to say this: I support this amendment because it doesn't make any difference whether we have constitutional levee boards or legislative levee boards. The fact that they are in the constitution or not in the constitution is not going to prevent one flood or cause one. That is done by the floodwaters and we are going to handle the situation with floods as best we possibly can under any circumstances, whether they are constitutional levee boards or legislative levee boards. Now, I'd like to say this, having served in the legislature for a little while, the legislature is made up of individuals just like you and I. If this is a responsible body, then I am responsible. If you can't trust the legislature, you can't trust this body. If you have any respect for this particular body, you should have it for your legislature. I just think that this is one of the things that we don't need to clutter up our constitution with. Therefore, I ask you to delete the amendment. You are not abolishing a single levee board, just the mere fact that it's not in the constitution. I ask you to approve of the amendment.

Further Discussion

Mr. Nunez Mr. Chairman and fellow delegates, you know, there's a lot been said about levee boards. The legislature has been dealing with this problem. There was a study committee, and they issued a very lengthy report after a very lengthy hearing. I guess you can say there were bad levee boards in this state. I guess you can even say there are presently bad levee boards in this state. I guess you can say there will be bad levee boards in the future. I guess you can say there are bad legislators in this state, or there have been and there will be in the future. Or, there have been bad governors, and there are... I'm not going to say there's a bad governor now. But, there are bad presidents. You could talk it right on down the line. But, let me tell you, let me tell you what I've experienced in the past. In five years, my particular parishes have been hit by Camille and Betsy and completely wiped out. I mean Plaquemines Parish, the lower end of it, was devastated to the point that where there was a home, there was a set of stairs left or there might have been a bathroom fixture. St. Bernard was the same way. That's twice in the past five years. The Corps of Engineers calls these one hundred year hurricanes, but we have had two in five years, two in five years. In the past fifteen years, we have had about four of them. The area that I represent has been totally wiped out at least three times and inundated at least five times. When you get people that come to you with two and three S.B.A. loans, two and three S.B.A. loans, you know that something has to be done. Let me tell you that the Department of Public Works cannot do it. The administration cannot do it. The United States Corps of Engineers cannot do it. They admit they cannot do it. Certainly, the Corps of Engineers is the first one to come in down there after your levees are destroyed. They will help you repair them, but the water is there;

the damage is there; the inundation is there; and they are repairing our levees. I'll never forget Betsy. Mr. Mire asked a question about the civil defense, and these other people can do it well. I'll never forget the night that Betsy was roaring down, down the gap, down the delta gap between St. Bernard and Plaquemines and Orleans. We tried desperately to get some of the civil defense officials and the national guard officials, and we just couldn't get them. So, what happened? Ninety-five percent of all the equipment that they use was under water two hours after the levees broke—two hours after. We had not one piece of equipment. My whole point of this: if you do not allow, if you do not allow the local people, that's the only people that have ever seen out there, not after the disaster, but during the disaster and before the disaster. That's what counts, if you don't constitutionalize levee districts. I think that's what the amendment is all about: to delete the provision or constitutionalize levee districts. If you allow the emotionalism at the moment because a levee board member gets involved in some scandal, and the legislature, by... by an act, can abolish all of them and put them under the Department of Public Works, I believe we are making a serious mistake; I believe we are making a serious error. I believe that the only place for these levee districts to give the people complete protection in this state is in the constitution. If you read the report that the legislature themselves made, they recommend that it stays there, and they recommended a few other things that we're not going to do. All we are trying to do is put them in the constitution. You know, there's been a lot of remarks from some people that I'm sure that have never been flooded, that don't know what the levee is all about, and that certainly wouldn't know how to handle one if there was in their district.

I'll yield to a question, Judge. You keep raising hands and all that. Do you want to ask me a question?

Mr. Henry Well, I'm sure you can answer that question.

Mr. Henry Well, I'm sure you can answer that question. I think it's absolutely necessary that these levee boards remain in the constitution. I think it's vital and essential for the continued growth and the continued prosperity of our state. There is off the coast of Louisiana where you have a lot of growth oil wealth and a lot of other wealth... a lot of natural resources are completely protected by these levee systems. The reason why we have to have the ability to have new levee systems is because of the fact that... down in Lafourche Parish two years ago we just created another levee district. They flood annually down there just like they flood annually throughout the coastal systems of Louisiana. I think it's vital that we keep these levee systems in the constitution.

Mr. Henry Well, I'm glad to yield to any questions.

Mr. De Blieux Senator Nunez, how many hurricanes do you think having this in the constitution will prevent?

Mr. Nunez Senator De Blieux, as usual, you're missing the point of the whole thing.

Mr. De Blieux Well, I'm sure you can answer all your arguments on the hurricanes. I just wonder how many of them will be prevented by having this in the constitution?

Mr. Nunez Well, naturally, none of them will be prevented by putting it in the constitution, but I think you might save a few lives because if they don't put it in the constitution, you'll be one of the first legislators to vote to abolish them.

one of the first.

Mr. Nunez Well, I'm sure you can answer that question.

Mr. Nunez I really don't know, Mr. Tobias.

Mr. Tobias Well, I'm sure you can answer that question.

Mr. Nunez Well, I'm sure you can answer that question.

Mr. Tobias So, in effect, what we are now doing, if we do not adopt the levy amendment, we would be putting all of the levee districts throughout the state in the constitution. Do you agree?

Mr. Nunez Well, I'm sure you can answer that question.

Mr. Tapper Mr. Chairman, fellow delegates, I'll be very brief. I rise in opposition to the amendment. I stand here as one, during hurricane Betsy, who had six feet of water in his house and lost everything... I lost everything I owned in 1965. I, like Senator Nunez and the others that have spoken against this amendment, realize what it is to lose everything you own with a flood. Oh, sure, we had levees, but our levee broke. We just couldn't withhold the surge of hurricane Betsy. The same thing happened in Plaquemines in both hurricane Betsy and hurricane Camille. I know most of you legislators that are here went down to Plaquemines and saw the devastation. Yes, Senator De Blieux, I don't think that you can stop a hurricane by putting this in the constitution, but I urge you to do so, so that the lives and the property of the people will not be subject to the whims of a majority of the legislature of which I am a member. I am a member of that body, and I don't think the legislature would abolish necessary levee districts, but I fear that possibility. I urge you to defeat this amendment.

Further Discussion

Mr. Lennox Mr. Chairman, fellow delegates like Senator Nunez, spent the night on the streets of New Orleans and St. Bernard Parish August 17, 1969, when hurricane Camille broken foot tides in the Industrial Canal of the Ninth Ward of New Orleans. The next morning I had the damndest fight you ever heard of. He showed, to my satisfaction, that the Levee Board had done a sorry job of maintaining its levees that fronted his parish. He will attest to the proposition that something was done right then. Now, I submit to you,

let's get them out of the constitution. I support this amendment.

Mr. Nunez Well, I'm sure you can answer that question.

Mr. Nunez Well, I'm sure you can answer that question.

Mr. Nunez Well, I'm sure you can answer that question.

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speakers who said, "The authors of this amendment don't know what it is to be in a flood. They don't know what it is to live along a levee." Well, that's bull, and they know it. They must not know where Don Kelly and I live. We live along the banks of the Red River. My livelihood as a farmer is dependent on the protection of that levee. No later than this last year we lost fifteen hundred acres under fifteen foot of water for the whole crop season. It makes a difference to my pocketbook. So, I know what I'm talking about when I talk about a levee 'cause when I look out the back door of my farmhouse, three hundred yards away is a levee that separates me from a mighty river. Now, I know the importance of levees, and I also know the job we're sent here to do: that is, to write a constitution. It is untrue, patently, patently untrue, to say that by putting them in the constitution we've done anything. Read the section. All it says is "the legislature may." What Don Kelly and I are trying to do is let the legislature do its will. They represent us. They are going to protect us. They are going to make sure these levee districts buck up and shape up and give the kind of performance we need. Now, what we're asking here is to take verbiage out and give the right to the legislature to protect us through these levee districts, to meet the needs of the day, not to freeze it in the constitution, one way or another. It amazes me in the months I've spent in this Constitutional Convention as to how we can come to an issue so obvious and so clear and so vital and have so many of us sit on our seats and use those same seats to do our thinking for us. It is time to stand up--perhaps too late, but better now than never--to stand up, and let's write us a constitution. Not one chocked full of this kind of stuff, but one which shows faith in the legislature, one that shows a need of the legislature to have the flexibility to meet the needs as they come. Now, I close by saying we're not trying to destroy the levees; we're trying to maintain their integrity by giving them the real strength that we have in the law. That is, when there's a problem, it can be changed. The levee district in New Orleans won't have to spend six hundred thousand dollars, or whatever the district was, to try to get a constitutional amendment through last time so they would have the right to do what the legislature should have been able to grant them. I beg of you, I ask you to think on it and think about it. Let's write us a constitution. Let's take this legislative matter out of our basic law and give it to the people that represent me and you, our legislature.

(Questions)

Mr. Ginn Mr. Roemer, in your opinion, would it... if we took this statutory material out of the constitution, would it in any way affect the existing levees and the levee boards by taking it out and putting it in the statutes?

Mr. Roemer It would only affect them, Mr. Ginn, if at some future date the legislature saw an obvious need and met it. We're giving them the right to do that. You know, yesterday, we had a chance to really strike a blow to make these levee districts shape up. We had a chance to make them go to the people. We missed that chance yesterday; let's don't miss it today.

Mr. Stovall Mr. Roemer, are you aware that Senator Lauricella from Jefferson Parish and the study committee from the legislature on the levees recommends this type wording for the constitution? This is the legislative recommendation. Were you aware of that, Mr. Roemer?

Mr. Roemer No, I was not, and I can only answer that by saying I'm glad to see the legislature studying the problem. I'd like to give them

Mr. Stovall Well, this is their recommendation. Furthermore, Mr. Roemer, you're rather emotional about this, aren't you?

Mr. Roemer Oh, no more so than I am about most things I care for.

Mr. Stovall Are you aware that about two million people in south Louisiana are emotional about it and feel the opposite way the way you feel about it, Mr. Roemer?

Mr. Roemer Well, I didn't know you spoke for two million people, Reverend; I'm impressed. I'd only say about those two million people that if they think that we've given them anything by putting it in the constitution, that's a little bit like pabulum. I think they're bigger than that.

Mr. Womack Mr. Roemer, do I remember you right to say that you was offered the opportunity of naming the levee board members?

Mr. Roemer Yes.

Mr. Womack Do you realize that as strong as I am in my position that that made me weaken just a little bit, and it looked like it more justified another system?

Mr. Roemer Yes, I would realize that. I might say in the offering of those positions, Mr. Womack...

Mr. Henry You have exceeded your time, Mr. Roemer.

[Pursuant to Article I, Amendment 10, the following motion was made and seconded:]

Amendment

Mr. Poynter Amendments sent up by Delegate Lennox as follows:

Amendment No. 1. On page 24, between lines 1 and 2, insert the following paragraph:

"(3) The authority of levee districts to expend its revenues shall be limited to drainage, flood control, hurricane flood protection and administrative expenses.

The legislature shall provide for the orderly transfer of all powers and functions of any levee district not directly related to the performance of drainage, flood control, hurricane flood protection and administrative expenses. In such case the legislature shall further provide that the local governmental subdivision shall succeed to and be vested with all the rights, income, resources, jurisdiction, authority and powers of such levee districts required for the exercise thereof."

Explanation

Mr. Lennox Mr. Chairman, fellow delegates, the first sentence is precisely word-for-word similar to the first sentence of the prior amendment which you rejected by a vote of sixty-odd to forty-six. However, the second sentence, very clearly states that the legislature shall inherit this problem and do something with it and provide for an orderly transfer of all powers and functions of any levee district which are not directly related to hurricane or abnormal tide protection functions. Now, it's just one more effort to get the levee boards of this state and, particularly, only I have some knowledge of, back in the levee business irrevocably and get them out of the cocktail bar business, and the marina business, and the airport business, and give the taxpayer what he pays for--protection of his life and property from hurricane tides. Now, I submit to any questions.

Questions

Mr. Vesich Mr. Lennox, what do you propose to

do with the various other agencies which the levee board is running? How do you intend to handle that?

Mr. Lennox I wouldn't propose to do anything with them, but I would suggest that the legislature, if this amendment were adopted, would provide for that.

Mr. Lennox I mean, would you close them down?

Mr. Lennox Oh, yes. Yes, you know better than that. Now, let me give you one example in answering your question. If the city of New Orleans absorbed the New Orleans Lakefront Airport into its city government and placed it under the jurisdiction of the New Orleans Aviation Board, which is a bureau of the city government, that agency operates the air carrier airport located in Kenner. If you combine the two, the rate compensatory aspects of the contract between the city, through its aviation board, and fifteen airlines who operate in and out of Moisant would require that those airlines pick up the deficit of operation at New Orleans Lakefront Airport. It would be no burden on the city government of the city of New Orleans. As a matter of fact, it would be an asset because you would have the management of those two airports under the New Orleans Aviation Board, where it would have been since 1931 had the Governor Huey P. Long not given this to Abe Shushan as his thing, at the time.

Mr. Vesich What would you propose for the then? How would you salvage that?

Mr. Lennox The marina could be very easily merged into the New Orleans Yacht Harbor which is contiguous, as you know, to the Orleans marina. You could have one administration, one set of telephones. You wouldn't have all that double overhead and double management.

Mr. Vesich Who would maintain the lakefront?

Mr. Lennox The lakefront would be maintained as a function of levee districts involving hurricane, flood control, hurricane flood protection, and administrative expenses.

Mr. Lennox And the maintenance of it.

Mr. Lennox I'm talking about the grass cutting too. The grass cutting of the levees and the continuous... contiguous parks would remain the responsibility of the Orleans Levee Board.

Mr. Vesich Your amendment says that?

Mr. Lennox Yes, sir, it sure does.

Point of Information

Mr. Lennox It is not the same.

Mr. Lennox It is not the same.

Mr. Lennox It is not the same. It's close.

Mr. Lennox It is not the same.

Mr. Lennox It is not the same.

Mr. Lennox It is not the same.

Mr. Lennox It is not the same.

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Mr. Lennox It is not the same.

Mr. Lennox It is not the same.

Mr. Lennox It is not the same.

nonhurricane or nonflood protection activities could be absorbed into that local governing subdivision. That's not the case here at all. This must be done by act of the legislature.

Mr. Shannon Well, under the committee proposal, can this not be accomplished?

Mr. Lennox Not as I understand it. It would take a vote of the electors, or in my case, of your proposal.

Mr. Shannon Well, would you... without a vote of the people?

Mr. Lennox Oh, I'm one of those guys that has the greatest confidence in the legislature, Mr. Shannon. I think they are fully capable and competent to do the right kind of job.

Mr. Shannon You don't think your people in New Orleans know what they want?

Mr. Lennox I think the people know what they want because they elect the legislators they send to Baton Rouge to govern them.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, I think it's perfectly obvious that this is the same amendment in all of its essentials as was offered before. I ask you to reject this amendment as was the previous amendment rejected. If there are no further speakers, I call the question.

Questions

Mr. LeBlau Mr. Perez, do you know of any other thing that levee boards could expend money for other than what's set out here and still not do a good job?

Mr. Perez Well, under the law there, the levee districts are entitled, like in Senator Jim Brown's levee district area, to go into some limited amount of recreational facilities. This would absolutely prohibit it. I see no reason why, if the people in a particular area who're paying those taxes decide they want to do it and the law authorized it, I see no reason why they shouldn't be able to do it. But, the problem, the big essential problem you have is with regard to the Orleans Levee District, right now, which does operate other things. It's my understanding that procedures are now being followed to take the airport and to put it under the State Airport Commission so that, in time to come, that will not be a part of the function of the Orleans Levee Board. But, what would be done here is to do that which the legislature should address itself to because the Orleans Levee District is now being taken out of the constitution, and the legislature will be able to deal with these... fully be handled by the legislature with respect to these powers and duties.

Mr. Shannon I think that anyone has any plan to... information that anyone has any plan to... of government other than the Orleans Levee Board.

Mr. Shannon I think that anyone has any plan to... information that anyone has any plan to... of government other than the Orleans Levee Board.

Mr. Shannon I think that anyone has any plan to... information that anyone has any plan to... of government other than the Orleans Levee Board.

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success for three and a third years?

Mr. Perez Well, sometime...Rome wasn't built in a day, Mr. Lennox. But, your amendment would do a great deal of violence to what now exists.

Mr. Lennox Well, this thought has been going on for thirty-two years, and I think it's high time we do something about it.

[Previous question ordered. Record vote ordered.]

Closing

Mr. Lennox The same question exists now as it has existed since we started talking about this at one o'clock. Do you want taxes imposed on your property for the purpose of hurricane or tidal protection used for purposes other than that? Your answer should be yes or no. Make it clear that it would be a record vote. Thank you.

Questions

Mr. Vesich Mr. Lennox, isn't the purpose of the entire levee board set out in the constitution? Doesn't it say for recreational purposes?

Mr. Lennox The Orleans Levee Board does indeed, and it was...the constitution was amended, as I recall in reading the history, something like four times in three years to create new enterprises for the Orleans Levee Board during 1932-36.

Mr. Vesich All right, now, when you are imposing that millage, you are imposing it for all of the purposes of the levee board: recreation, beautification, the airport, etc. Am I correct?

Mr. Lennox Mr. Vesich, I guess...

Mr. Vesich It's not only for hurricane protection.

Mr. Lennox I guess in the case of Orleans Parish you are right. I would like to give the people of Orleans Parish what they think they have been paying for since 1927.

[Amendment rejected: 34-75. Motion to reconsider failed.]

Amendment

Mr. Poynter Amendment No. 1 of Mr. Brown.

On page 23, line 21, after the word "district", change the semicolon to a comma and insert the following prior to the language added by Convention Floor Amendment No. 2, proposed by Delegate Nunez and adopted on yesterday:

"and at least one member of said board shall reside in each parish within such district," so that it would read as follows:

Line 27 would read "or elected from residents of such district, and at least one member of said board shall reside in each parish within such district, as provided by law;" If I said 21...that's the way line 27 would read.

Explanation

Mr. Perez This is Senator Brown's amendment which I see no objection to. What it provides is that where you have a multi-parish district, at least one member of the board shall reside in each parish within the district. It would just guarantee each parish one member of the board. I see no objection to the amendment. That's the present system.

Questions

Mr. Gravel Mr. Perez, under the provisions that appear about to be adopted by the convention, it's

possible that the, all the levee districts, levee boards, could be merged and consolidated into one statewide district. Isn't that correct? If this amendment is adopted, then you'd have to have sixty-four people on the levee board, would you not?...commissioners...commissioners in the districts?

Mr. Perez Yes, sir, that would be correct. All I am saying, and this is Senator Brown's amendment; I agreed to handle it. Unfortunately, Senator Brown is not here. I just—I was not thinking of it from that context. I was thinking of it primarily from how levee districts now are organized and you have some levee districts which are multi-parish districts. The purpose of Senator Brown's amendment was just to be sure that there would be one...at least one member from each district.

Mr. Gravel But don't you agree that this presents a rather serious problem if the legislature, under the authority that it would have under this constitution, were to merge and consolidate all levee districts into one statewide district, which they could do.

Mr. Perez Well, I'd have to agree with that if that were the case, yes, sir.

Mr. Lambert No, I want to ask you a question, Mr. Perez. Let me ask you this. However, if the legislature did not consolidate into one statewide board as Mr. Gravel mentioned—which was attempted, I believe, in the '72 Session and which was not successful—would not, as it's written now, could it not be interpreted, for example, that if you have eight parishes within a levee district, they could all come from one parish. Is that not possible?

Mr. Perez That's the fear of it.

Mr. Lambert And the taxes are paid by each...by all the citizens that live within each parish.

Mr. Perez And that's the fear that Senator Brown had and that's why he wanted to try to get the amendment in.

Mr. Tapper Mr. Perez, my concern is in the event there's a levee district that takes in four parishes and it's a three-member commission. We'd have a similar problem, wouldn't we?

Mr. Perez Well, I don't...and under the present situation there are at least enough members to provide at least one from each of the various parishes.

Mr. Goldman Mr. Perez, what would be the harm, in case the legislature decides to merge all levee districts into one state district, of having 64, each parish represented on that levee board?

Mr. Perez Well, of course, I would think that Senator Gravel would say that would be too large and unwieldy...

Mr. Goldman But each parish ought to be represented, don't you think?

Mr. Nunez Mr. Perez, the reason for the previous amendment that we adopted, by myself and Mr. Pugh, was to allow the legislature to determine these sort of problems. I think if we lock it in the constitution, we might be developing a problem that we can't handle.

For instance, LaFourche district that comes from the Atchafalaya Basin all the way down to Plaquemines. You might develop a problem there where LaFourche distributes...or contributes half the revenues and some parishes don't contribute any at all. If we can spell those things out in the legislature and the law, I think we'd be

better off than locking it into the constitution.

Mr. Perez: Again, this is Senator Brown's amendment. I am just trying to explain the reasoning of it. I'd have to agree with you that that would be correct, Senator.

Mr. Abraham: Mr. Perez, as the section reads now it says that "the members of the board of commissioners of the district shall be appointed or elected from residents of such districts as provided by law." Don't you think that if we are going to leave it up to the legislature to determine whether or not these people are going to be elected or appointed, that we could also leave it up to the legislature to determine where they are going to come from?

Mr. Perez: Again, I wish Senator Brown were here to be able to more forcefully push his position. I am trying to give to you what the alternatives are. The alternatives are that there is a possibility that a particular parish may not be represented on the board and that's why he wanted to put this amendment in.

Mr. Roy: Mr. Perez, do some parishes belong to two or more levee boards, or some parts, or word of a parish in the different levee board systems?

Mr. Perez: Yes, there are some parishes where a part of a parish is included within one district, maybe a part of a parish within another district.

Mr. Roy: Well, how would you interpret this when it says "in each parish within such districts"? Would one ward of a parish be enough to get it a member on a particular levee board, or would it have to be the entire parish?

Mr. Perez: Yes, I would assume so. Yes. But I don't believe that you have any with just one ward. It's always a very substantial part of the parish included.

Further Discussion

Mr. Gravel: Mr. Chairman, ladies and gentlemen of the convention, I really hesitate to oppose this amendment because I know that the purpose for which it was introduced by Senator Brown is laudable. I really support the purpose. What I am concerned about is the possibility that this thing could be handled in such a way that we would end up with an unwieldy board if we had too many parishes involved in some consolidated levee district.

I am just wondering whether, in view of the fact that Senator Brown isn't here, whether we couldn't help get the concept developed by asking the proponent of the amendment to withdraw it at this time and then, after the word "and," put "and unless otherwise provided by law," at least one member of the board shall reside in each parish within such district." That, then, of course, would mean that there would have to be, under the constitution, somebody in each parish unless the legislature felt that something had to be changed. Otherwise, I just think it's a dangerous amendment in its ramifications and implications. As somebody has suggested, I think you could almost defeat the constitution

, the way this clause...
often... it says, "at least one member of the board shall reside in each parish within such district."

Mr. Gravel: I am just wondering whether we couldn't help get the concept developed by asking the proponent of the amendment to withdraw it at this time and then, after the word "and," put "and unless otherwise provided by law," at least one member of the board shall reside in each parish within such district."

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Mr. Nunez: Mr. Gravel, don't you think that the provision again--the provision we adopted before, "the boards heretofore or hereafter created, shall be provided...as provided by law..." The member-ships would cover what you just suggested?

Mr. Gravel: I am just wondering whether we couldn't help get the concept developed by asking the proponent of the amendment to withdraw it at this time and then, after the word "and," put "and unless otherwise provided by law," at least one member of the board shall reside in each parish within such district."

Mr. Nunez: What I'm saying is that the language we now have would take care of the problem that exists and we can cover that in the legislature.

Mr. Gravel: No, I don't think it could with this amendment. The amendment says "at least one member of the said board shall reside in each parish within such district"...

Mr. Nunez: That's not what I meant, Mr. Gravel; I said the language that we now have in there of the amendment we adopted, that the legislature can provide that if a levee district covers four parishes, that a member shall come from each parish.

Mr. Gravel: I am just wondering whether we couldn't help get the concept developed by asking the proponent of the amendment to withdraw it at this time and then, after the word "and," put "and unless otherwise provided by law," at least one member of the board shall reside in each parish within such district."

Reading of the Section

Section 45. (A) For the purpose of constructing and maintaining levees, levee drainage, flood protection, hurricane flood protection, and all other purposes incidental thereto, the governing authority of each district, may levy a tax not to exceed 5 mills on the dollar...

Explanation

That this will be the first of the amendments directly dealing with finance in the constitution...

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ceilings are being imposed by the governing authorities involved. So that when a solution comes, if it's on a statewide basis for the imposition of...or rather for either a rollback or an increase...I don't see any difference between rolling back, or providing for an increase in millage for, for instance, a levee district tax, because you are going to have to be dealing with all of these other various taxes which are either statutory in nature or set up otherwise than in either the Local Government or the Revenue and Finance Article. So I really don't believe that we'd be doing any violence to the position of Revenue and Finance. I believe it would be consistent with an overall solution to the subject matter.

Now as far as the question of the district tax itself, Section 45 (A) retains what is in the present constitution except that it consolidates the right of all levee districts to impose five mills. Unfortunately, we had to make an exception for the Orleans Levee District because of the fact that the present constitution only authorizes them to impose two-and-a-half mills. If we were to include the Orleans Levee District in this provision, what it would do, would be automatically, through a new constitution, give...or rather impose an additional tax on the people of the city of New Orleans. That was the reason the committee felt it had to put this exception in for the Orleans Levee District because it was the committee's position that we did not want, through the medium of writing a new constitution, to increase taxes.

The Section (B) provides that in the event there is a necessity for an additional tax, there would be a vote of the people of the district, and if the people so voted, their tax would be increased. It does not have any particular ceiling so that there would be no need in the future for any amendment.

Now I might touch just a little bit upon the question of the automatic five mill...up to five mill tax. The problem we and you have is similar to the one which we had with regard to parishes and municipalities. We have a provision in our Local Government Article which would give to parishes the same authority they now have basically, four mills for a parishwide tax and seven mills for a municipal tax, without a vote of the people, with the provision under the new provision and new proposal that with a vote of the people it could be increased. So that it was the committee's position that these various agencies which are performing essential functions would...must have some automatic tax, that is some base, bottom tax and then from there, if they want more and if they need more, then they'll have to go to the people for an election.

I yield to questions at this time.

Questions

Mr. O'Kell Mr. Perez, what's a for instance of how much millage is in taxes for different levee boards right now? You have a ceiling of five percent in here. I'm just wondering what that would be.

Mr. Perez This is what is in the present constitution, what you see here, except that it's a consolidation.

I might say, by the way, for Mr. Lennox's information that in the present constitution there was additional authority for the New Orleans Levee District to use some of this millage for land reclamation and we have taken that out. So that for the...way it reads now "for the purpose of constructing, maintaining levees, levee drainage, flood protection, and hurricane flood protection, and for all purposes incidental thereto", they may impose this tax. This is the tax which is in the present constitution and I really think helps take care of Mr. Lennox' problem.

Mr. Jenkins Mr. Perez, you touched on this in

your opening statement, but isn't it true that as of yet, we have no idea what assessment ratios are going to be in the new constitution, if there will be. We don't know whether the burden of taxation is going to fall on farms or homes or industry. We don't know all sorts of things about taxation. So when we say five mills in an article here, we really don't know what we are saying, do we?

Mr. Perez Well, I tried to explain that, Mr. Jenkins, a little bit earlier and explained it in this fashion. This five mill tax is only a very small part of the overall taxes generally paid by people in an area. And then when the solution...when we come to the solution as to what is to be done, whether it be a rollback or an increase, etc...there would be the same uniform application say, to a levee district tax as there would be to sewerage tax. You're in the same position where all of these other taxes have either a specified amount of millage, or a ceiling which most of these people are imposing at this time, for instance, ten mills for sewerage, and five mills for garbage, etc., etc.

Mr. Jenkins Let me ask you a substantive question about it. Under Section (B) there is really no limitation whatsoever on the taxing authority other than vote of the people.

Mr. Perez That's correct.

Mr. Jenkins But formerly, people, just property owners could vote, and they could vote their assessment. Now, it's up to a popular vote. Isn't it more important now than ever that we have fixed limitations in the constitution in order to protect the property owner?

Mr. Perez I would say that we have a similar provision in the present constitution which does not have a ceiling. Of course, I recognize the problem that you pose.

Mr. Champagne Mr. Perez, why do you want the "not to exceed five mills on the dollar"? You want it in the constitution because they will actually have a right to that much? Is that right?

Mr. Perez Yes, sir. You see, again, it's just like the alimony tax for municipalities and for parishes. The committee felt that we should continue the same position that certain agencies should have the right to...right to...for automatic authority for the imposition of taxes.

Mr. Champagne Now, the legislature could grant you that right, if they chose to.

Mr. Perez Yes, sir. Maybe they wouldn't, and that's the problem.

Mr. Champagne That's correct. O.K.

Mr. Lennox Mr. Perez, do you know that your concern for the...of New Orleans and its citizens is deeply gratifying?

Mr. Perez Thank you, Mr. Lennox.

Mr. Kean Mr. Perez, isn't it a fact that we indicated to the Revenue and Finance Committee, that on these sections which had millage provisions in them, that we would only move to reconsider, and not put them on the table so they could be changed if there were drastic changes in the assessment picture later?

Mr. Perez Yes, Mr. Kean, I'm glad you brought that up. When we met this morning with the Finance Committee, we made the suggestion that we would not lay any of these tax provisions on the table so that they could be reconsidered just with a majority vote. It was my feeling, anyhow--and I can't speak for the committee because we

haven't had a meeting—but that we should try to dispose of as much of this Local Government Article as we can before we get off of it, because the Lord knows when we will ever get back on it again.

Mr. Lambert Mr. Perez, on line 14 where it says "on all taxable property situated within the alluvial portions of said district subject to overflow"; does that change the present constitution?

Mr. Perez No, sir, that's exactly as it reads in the present constitution.

Mr. Lambert Well let me ask you this, just for my own information. Would that include, for example, backup water, or what? For example, could this conceivably extend the boundaries of a district in...parishes subject to the tax?

Mr. Perez This will not extend anything, because these are the exact provisions which are in the constitution now and...I'm really, of course, I'm really not sufficiently familiar with the subject matter because all of the land on which we live is totally flat and all subjected to overflow.

Mr. Lambert Yes, but you are talking about all the districts, not just the nearest in your area.

Mr. Perez I understand that. I say I am not sufficiently familiar with the reason for this provision except that it was in the present constitution and I assume, it's possible in some areas in North Louisiana where you may have valleys and hills, that the hills may not be subjected to the tax whereas the valley is. But whatever, whatever the present situation is today that's what we tried to maintain. We did not make any change.

Mr. Lambert Let me ask you one other question. Is it in the present constitution that a levee district can levy from one to five mills without a vote of the people? This is just a general alimony type provision?

Mr. Perez Yes, sir. This is an alimony type tax. It's exactly the same thing which is in the present constitution except that we consolidated the special provision on the Orleans Levee District with the general five mill provision.

Mr. Lambert Let me ask you one more question. Is it in the present constitution that a levee district can levy from one to five mills without a vote of the people? This is just a general alimony type provision?

Mr. Perez Yes, sir. This is an alimony type tax. It's exactly the same thing which is in the present constitution except that we consolidated the special provision on the Orleans Levee District with the general five mill provision.

Amendment

Mr. Poynter The first set of amendments offered by Delegate Gravel.
"Amendment No. 1. On page 24, delete lines 5 through 26, both inclusive in their entirety."

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, I have had a number of discussions with other delegates about the fear that I have regarding our taking action on Section 45 because of the absolute, total uncertainty of what we are going to be doing. I have other amendments that would delete Section 46, and also Section 49 for the same reasons. Now, let me point out to you what I think is a very, very serious problem. This particular proposal authorizes, except for the Orleans Levee District, the governing authority of each district to levy annually a tax not to exceed five mills on the dollar. On what dollar? This doesn't make sense unless it's five mills on the dollar. I think it's very probable that the Legislature is probably going to be made that

value" are used elsewhere in the provisions that I don't think we ought to consider now, and that we ought to delete. Particularly, also, in Section 49 the words "assessed value" are being used. One of the most important things that we are going to do at this convention, and one of the things we can only do intelligently and sensibly, is to define "assessed value." There's no way, ladies and gentlemen of the convention, that we can do that unless and until we have before us all of the concepts and the positions that are going to be asserted and placed before us by the Committee on Revenue, Finance and Taxation. If we don't delete, or at least defer these particular provisions, we are going to be operating in the dark or, worse still, we are going to be imposing in the Local and Parochial Government Article, definitions or implications that may not have any effect or any validity on the entire...on the revenue provisions of this constitution as a whole. Let's don't make the mistake of proceeding here under false premises. By that I mean we cannot move forward intelligently unless and until we have the standards that we are entitled to have considered by this convention after Revenue and Taxation makes its recommendation and reports to us.

Frankly, my own personal view is that in fairness to state government, and in fairness to local and parochial government, we should consider taxation and revenue matters integrally, or at least side by side, so that we don't make the mistake, or so that we don't tie ourselves down now peripherally in areas where we are going to really work substantively later on when we get to finance... Revenue and Finance Committee's report. I think this is a serious point; one that I urge you to consider very carefully. This is not to say that we are opposed in principle to the concept that emanates from Section 45 or 46; it's only to say let's put our house in order and consider these things properly and in the proper place.

Therefore, I urge that you support this amendment to delete Section 45 at this time, so that we can consider this or this can be considered later, either as a proposal by the Local and Parochial Government Committee with Revenue and Taxation, or as a recommendation that would come from that committee which frankly, I think, is the committee that should make its recommendation to us in this area.

Vice Chairman Roy in the Chair

Questions

Mr. Lanier Mr. Gravel, doesn't Section 45 set up a...?

Mr. Gravel That's correct.

Mr. Lanier Yes, but the question is whether or not the...?

Mr. Gravel Yes, Mr. Lanier, and I'm not opposed to the idea that we have to have an alimony tax... millage to an undefinable base, such as I suggested to me by the words "on the dollar" assume that what you meant on this would be the assessed valuation.

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before the convention just what we mean by 'assessed valuation.' That's my only problem.

Mr. Lanier Isn't it true, Mr. Gravel, that this is a permissive assessment, not to exceed five mills and that the district would not have to assess the whole five mills?

Mr. Gravel That's true, Mr. Lanier, but I think you just completely miss my point.

Mr. Lanier One other thing, Mr. Gravel, won't we have this same problem with all of the statutory maintenance millages? Couldn't we provide a rollback provision to take care of this?

Mr. Gravel The rollback provision, or the adjusted millage concept, is something that we are going to have to consider. But that has nothing to do with the contention that I'm making, and the contention that I strongly make now is that we have not yet put down the foundation upon which we can approach revenue and taxing provisions. We are not going to be able to do that until we determine what we mean by 'assessed valuation.' This is not the place to make that determination.

Mr. Nunez Mr. Gravel, I don't quite understand why you are attacking the provision "on the dollar." Regardless of what Revenue and Finance and Taxation comes up with, the dollar will not be changed by it. The value of the dollar will be there. It is just used as a unit to say "five mills on the dollar." Regardless if...if they come up with a five percent or a ten percent of assessed value, it still would not change the "X" number of dollars that will be available for taxation.

Mr. Gravel But it's very clear, Mr. Nunez, that if that concept is true, we have to have developed the adjusted millage concept in order to know how much revenue we are talking about, or exactly what we are giving...what authority we are giving.

Mr. Nunez Well, in the revenue...isn't it true, in the Revenue, Finance and Taxation Article, if we do come up with a high assessment figure and the five mills is too much, we automatically have, a rollback provision whereby they would raise less or more money depending upon what they needed to do.

Mr. Gravel We haven't adopted any such provision yet. We haven't considered any such provision yet. That's my point.

Mr. Nunez But we have. Haven't we considered...we just adopted Levee Boards and from my knowledge of levee boards, the only funds that they have to operate on, isn't it true, would be this millage that you're going to allow them to use.

Mr. Gravel That's correct, sir. That would be correct according to what we've done. But we still have not poured the concrete and laid the foundation for the adoption of this section until we know to what that millage is going to attach.

Mr. Nunez Really, I don't see where it makes that much difference.

Mr. Gravel Well, I didn't expect, you know, some of you to see it.

Mrs. Warren Mr. Gravel, in the light of what has just happened this morning concerning Orleans district, would you say that the tax was the only dollar...only thing that they had to consider to operate on?

Mr. Gravel Well, I believe that the only revenues that the levee district...

Mrs. Warren I mean, listening at what happened this afternoon and yesterday, would you say the only revenue coming into Orleans Levee Board was

the tax dollar, to operate on?

Mr. Gravel No, I think they have other...other revenues.

Mrs. Warren Thank you.

Mr. O'Neill Mr. Gravel, under the committee proposal, I want to ask you a couple of questions about it we didn't get a chance to ask Mr. Perez.

Right...the old law as I understand it says that property owners would be able to vote on these millages, but the federal courts have since said that everyone will vote on them. Is that correct?

Under the committee proposal, in the second part of it, there is no ceiling on the millages. So, in effect, you would have just the total electorate possibly voting, you know, as much as fifty mills onto the property owners of a parish. That's one of my concerns about the section. That's why I would be for your amendment.

Mr. Gravel I don't...Thank you for saying that. I don't have as much concern about that additional permissive possibility by a majority vote, but I'm still concerned about our not having the starting point we should have in order to consider this section.

Mr. Nunez Mr. Gravel, your amendment would delete the entire section, as I read it.

Mr. Gravel That's correct. At this point it would.

Mr. Nunez At this point. Well, where would you attempt to put back into the constitution the provision that these people can levy the millage. Shouldn't we be...now my question is should we not defer an action if it's as serious as you say it is?—I mean deleting it?

Mr. Gravel If...Mr. Perez and the committee had been willing to do that, I would not have proposed this amendment. I had asked that that be done. It was my understanding that the committee was not willing for it to be done.

Mr. Shannon Mr. Gravel, we've already established the levee districts now. Now, you are not wanting to provide the necessary funds for them to operate on.

Mr. Gravel Mr. Shannon, that is not correct. I am saying we shouldn't try to provide "cheer in a vacuum." What we should do is wait...when we consider all matters relating to revenue, finance and taxation, and make this part of that consideration. Then the basic criteria can be determined and approved by this convention. Principally the one...one of them is the question of what do we mean by assessed valuation to which millages attach?

Mr. Shannon Mr. Gravel, did you know that this is practically the same thing that's in the present constitution?

Mr. Gravel Yes, and when it was adopted the...view of the framers of the constitution—or the voters, if it came by way of amendment—had before it all other provisions of the constitution which would make it possible for an intelligent determination of this particular language.

Mr. Shannon You do know that because they are authorized to levy this five mills that they do not have to levy the entire millage. In my district that I work with, we were authorized five mills, but at present, the millage is one mill.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I would hope to make myself abundantly clear to each and every one of you. We had a series of

voting on levees and levee boards. If you would check the record, you would find, having been behind one of those levees, I voted to maintain the levee boards.

That is not the question. The point is, for the first time in this convention, we are reaching at a point in which the committee, which was unable to meet because they did not have a quorum this morning, did not reach a consensus of opinion to pass over those matters upon which they do not know, or we do not know, what we are doing. I suggest to you that before I came to this convention I, and I suppose you did the same, made a commitment either in public or in private to yourself, or others, that you would try to inform yourself on matters before making a vote on those matters.

I simply submit to you that what Mr. Gravel is trying to do is force this committee to pass over a section and ask us to vote on those matters that we don't know what we are voting on. Let me inform you that five mills on one hundred dollars is five dollars, and to get to another extreme, five mills on a thousand dollars is much more. It's ten, right? Now the question is that why he's...they keep saying that we shall have taxes on sewerage and streets and other things, and we shall provide for a rollback or a roll forward. This is done by statutory material. But this is the first time in which we mention a millage by number in the constitution. Why put it there in the first place if you don't know what it means? Until we decide what percentage on which we shall raise and we shall establish our assessments, we are voting in the dark. We are shooting chickens in the midnight with no moon. We're shooting and we don't know where we are shooting at. Now all this talk about roll back and roll forward, I can assure you, we shall have. But at this point, this convention has not adopted anything of that nature. When you say five mills on a dollar, then you must know what the dollar means. Does it mean the same dollar you had last month? Or the same dollar that you shall have next year, which is indeed maybe ten dollars or fifty cents? It does make a difference. This is like buying chickens and you don't know what they weigh. You say they may weigh what they weighed last week, or they may weigh twice as much, or half as much.

I simply point out to you that we cannot resolve the problems which Revenue, Finance and Taxation, of which I am a member, here in this Local and Parochial Government section. I am for the levee boards. I want to conduct them. I want a guarantee in the constitution that they shall be provided for. But you give me no alternative if you insist now that I vote against them. I think it's unreasonable to force me to do so. I think it's unreasonable not to pass over this until we are near a solution in Revenue, Finance and Taxation. For the first time in history, everybody agreed this morning. Now that's setting history. Now why not wait just a little longer? We don't know how we're going to resolve this tax problem. But this convention shall decide. It shall be done here. So why be so hardheaded and insist we force a vote on something we don't know what we are voting for.

Questions

Mr. [Name] The mills on a hundred dollars are five dollars, right?

Mr. Champagne No, I didn't mean that.

Mr. [Name] I'm asking you, five mills on a hundred dollars is five dollars, right?

Mr. Champagne That's correct.

Mr. [Name] Until we know what assessment ratio we're going to be and things like that, and who's going to pay taxes, we should not vote on this. It will lead us to, do we?

Mr. Champagne That's correct, sir.

Mr. Burson Mr. Champagne, I've been an advocate on our committee of deferring consideration of our revenue provisions until we know what the tax base is going to be. But, there's one thing that disturbs me greatly. According to my calendar, it's October the 4th, and I've never yet seen a proposal out of the Revenue and Taxation Committee. Now, when we get to the millages, the alimony tax for education and the other alimony taxes that we have to have to keep basic public services going, will we have to wait until Christmas and find the proposal in our Christmas stocking? Or, are we going to get one sometime that will permit us to come back and have time to consider these other alimony taxes that we have to have?

Mr. Champagne Mr. Burson, we do have a proposal out of committee. I was on the minority side and didn't agree with it, but we do have one. The percentages are five, ten and fifteen, and it will be resolved on this floor. But, I can tell you, that if it was called to the calendar a week from today, we'd have it on the floor. We are now at a decision. If we...if this convention called it next week, we'd have it.

Mr. Slay Mr. Champagne, my question is in line with what you're saying. I notice in this proposal we limit the parish to four mills for general alimony tax, and here we come along saying to a levee district, you can have five mills.

Mr. Champagne Right.

Mr. Slay Now, I don't...my question is, do you think we can intelligently say that five mills is enough or too much until we've gotten a little further along with our...

Mr. Champagne We should probably say that we should have a range of five to ten mills.

Mr. [Name] I think that's a reasonable range. I think that's a reasonable range. I think that's a reasonable range.

Personal Privilege

Mr. Kean Mr. Acting Chairman, fellow delegates, I'd like to just take a couple of minutes to try and outline what I understand to be the problem that confronts us at this moment and which in my opinion, does not necessarily require that we pass over, delete or decline to take action with respect to this section and others which have similar questions raised in them. First of all, I think we should be very clear in our minds that this problem might be in all of the sections, but we simply delete and leave blank the words of the section that we're talking about. As I've said before, and others similarly drawn to it, we have a problem with the constitution that we're talking about.

I think we should be very clear in our minds that this problem might be in all of the sections, but we simply delete and leave blank the words of the section that we're talking about. As I've said before, and others similarly drawn to it, we have a problem with the constitution that we're talking about. I think we should be very clear in our minds that this problem might be in all of the sections, but we simply delete and leave blank the words of the section that we're talking about. As I've said before, and others similarly drawn to it, we have a problem with the constitution that we're talking about.

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find that out now. The only way to do it is to face up to these sections. The problem that has been raised by Mr. Gravel and those of the Finance Committee, who in all sincerity are troubled by the problem of what will be the assessment base. If the assessment base is a hundred percent, obviously seven mills or four mills or five mills will bring in more money than it does at the present time, and perhaps, more than we would want it to bring in. On the other hand, I'm more concerned with the possibility that we may end up with an assessment base that is lower than it is at the present time, in which case, four, seven and five may not be enough. So, what we're really arguing about is not the concept, but how many mills we're going to put in these particular sections. My suggestion would be in order to get...go forward with the concept, to decide whether or not we want to give local its governmental agencies the right to levy a millage without a vote, and a millage over that with a vote, that then we simply blank out all the references to the actual number of mills in these sections. Under the circumstances, once they are adopted, we would then move to reconsider without laying it on the table and when we come back at a later date after we've determined the assessment base, we then put in the amount of millage that would be required. Now, with that, it seems to me that we could move forward in an orderly fashion. We could go ahead and make a decision on our property...on local government's right to utilize the property tax as its primary taxing base, and at a later date come up with the actual millages we want to put in; both as to the allowable millages and as to any limitation if we want to put a limitation upon the amount of property tax millage that could be levied for operating purposes. With that, I don't see how we can approach this any other way. We might be waiting, as Mr. Burson has indicated, until the last day of the convention to conclude Revenue and Taxation recommendations with respect to assessments, and then what'll we do? It seems to me this would enable us to go ahead and complete this section, leave blank the millages and then under the circumstances, come back and cover that after we have done...after we have decided in finality with respect to property tax assessments. I yield to any questions.

Questions

Mr. Mire Mr. Kean, isn't it a fact though that we'd have to come back to the section even if we'd leave the mills blank now? So, if we've got to come back any at all, don't we again open it up for any amendments at the time?

Mr. Kean Well, my point, Mr. Mire, is that we need to decide whether or not we're going to follow this concept with respect to local governmental financing. If we're not, then the committee has got to go back and take a look at how we're going to do it, and that has nothing to do with the amount of millage that we would be authorized, or the limit on millage that you might want to set.

Mr. Mire All right. Well, don't you also agree that the concept as far as taxing people will be concerned...as far as ad valorem taxing will be concerned, will be whatever plan this convention does in fact accept, that will really set the stage as to how local taxes are going to be collected?

Mr. Kean I think this convention needs to make a decision now whether we're going to have continued local governmental taxation based upon property taxation. If you decide not, then under those circumstances, we've got to go back and start looking for other sources of local governmental revenue.

Mr. Mire Well, Mr. Kean, would you agree that a good analogy of what you're asking us to do is to sign a blank check and to come back and fill in

the figures a little later?

Mr. Kean No sir. I don't agree with that at all.

Mr. Pugh Mr. Kean, is it not conceivable that we could leave the blanks that you suggest, and then come back and find out there's a disagreement as to what should go in those blanks, and then we can't garner enough votes one way or the other to fill in the blanks in a constitution and be obligated to leave it like it was?

Mr. Kean Well, at that point, Mr. Pugh, we just all pack up and go home. That might not be a bad idea, any way.

Point of Information

Mr. Chatelain I realize that you have amendment... I mean, a motion before the house at this time, is that right?

Mr. Roy That's correct.

Mr. Chatelain All right, would it be in order that we ask for a five minute recess? I think we will get some things resolved that will keep a great deal of debate down. Would it be in order to have a three to five minute recess here?

Mr. Roy Mr. Chatelain, unless you are speaking for somebody that...you know...you know you're going to get it, I just think that's...

Mr. Chatelain I think we can, sir.

Point of Information

Mr. Perez Can I ask all of the members of the Local and Provincial Government Committee to meet over in the corner on the whichever side...

Mr. Pny Mr. Perez has requested that all of the members on the Local Government Committee meet over here on the left, in the corner.

Chairman Henry In the Chair

[The speaker is now in the chair.]

Mr. A. Jackson Mr. Chairman, I'll withdraw my motion if...if it's based on the knowledge and understanding that the Chairman is going to make a similar motion to pass over the sections that deal with taxation. Is that the motion...

Mr. Henry I believe that's what's forthcoming, Mr. Jackson.

[The speaker is now in the chair.]

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, at our little huddle which we had with most of the members on the Local Government Committee and also a goodly percentage of the Finance Committee, we are attempting to work out this procedure. We would, in Local Government, temporarily pass over sections...those sections which deal with finance, such as Section 45 on district taxes and 46 on bond...we would have an understanding that Revenue and Finance will meet tomorrow, and will hopefully report out their provisions. We would then, next take up the property tax problem before the full convention. We would then defer any of the Local Government provisions until the property tax issue was settled, then we would revert back to the property tax...or rather revert back to the Local Government provisions. With that understanding in mind, and if these things all work out that way, I now move that we pass over at this time, Sections 45 and 46...to determine whether or not...and then by tomorrow,

hopefully, everything will have worked itself out.

Mr. [redacted] with respect to Section 47, inasmuch as we have adopted the Intergovernmental Cooperation Section 23, in the article, we believe that the Intergovernmental Cooperation Article in Section 23--we now believe that it will be unnecessary to have this particular section. An amendment is being drawn at this time to delete that particular section, so I ask that we pass over it for the time being, so that when the amendment is ready we can go forward with it.

Mr. Schmitt. Now, why do you rise, Mr. Schmitt?

Questions

Mr. Schmitt I wanted to asked him a question. I don't think...I thought that we had amended it such that it didn't affect intrastate versus interstate type interests. In other words, this is concerned with two states' cooperation. I thought that Mr. Flory's amendment had eliminated that.

Mr. Perez No. 10

Mr. Schmitt. Never?

Mr. Perez I therefore move that we

Mr. Henry No. We need to take up...
want to delete it?

"Perez ready now so

Amendment

Mr. Poynter [Amendment by Mr. Kean and Mr. Chace]. Distribution copies haven't been made, but it simply reads, "On page 25, delete lines 7 through 12, both inclusive, in their entirety."

Amendment adopted without objection.]

Reading of the Section

Mr. Poynter "Section 48. Cooperation with
Federal Government

Section 48. All governing authorities of levee districts which have been, or may be created, are authorized to cooperate with the federal government in the construction and maintenance of the levees in this state, on such terms and conditions as may be provided by the federal authorities and accepted by the levee districts."

Explanation

Mr. Perez: Mr. Chairman, and ladies and gentlemen of the Convention, we looked at this Section 48 rather carefully with the hope that we might also be able to delete it. The only thing that bothered me was the word "and" in the last sentence. I thought, as you know, is very deeply involved in the construction of Mississippi River levees. I would not want to say that we have no objection to the decision and have the U.S. Corps of Engineers question whether or not we would have the authority to cooperate with them in the construction of levees in the future. It's just several lines in the constitution, but it could mean hundreds of millions of dollars to the State of Louisiana. If any chance we made a mistake by deleting something which might be justified by a "and" in the last sentence, I would have to say that I would not want to be responsible for that.

For that reason, I would suggest to you, that even though you feel that this may not be needed in an abundance of precaution, I would ask that we include this article, which is the same in the present as is in the constitution now, I'll answer questions.

objection. I

Explanation

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compensation will be to the full value of that which is taken. This is a change from the present law which merely provides the assessed evaluation for the last preceding year. This provision also says that with reference to batture property and property the control of which is vested in the state, there shall be no compensation. Batture is the portion of land between the high water and the low water. In some places in south Louisiana they call it the property that faces on the bayou, but in the legal terminology, the batture is between the high water and the low water. Property that is vested in the state or any political subdivision thereof for purposes of commerce would be property on which the state is already operating in a commercial type enterprise and no compensation is paid for that. Now, the (B) part of this section that if the district takes it and has to pay for it, then it is authorized to levy a tax on all of the taxable property situated within the district to pay for the property so used with the riparian servitude. This is the present law...this is the method for compensation; this distributes the loss throughout the entire district which is receiving the benefit of the public work involved and we felt that this was a valid provision to continue on in our law. The (C) part says "Nothing contained in this section shall prevent the appropriation of said property before payment." This issue has been litigated, this is our present law, and in other words, in the situation where the levee is caving in you don't have to go through any type of a formal procedure, you just go in and start rebuilding your levee and then you pay the compensation as is required by law. Under the law, at the present time there is no requirement that you go through any formal courtroom procedure to exercise this servitude. Generally what's done is a resolution of the agency involved is passed and they certify it by certified mail to the person whose property is going to be used. That is the general explanation of the riparian servitude and the compensation to be paid therefor. I'll be glad to yield to questions at this time, Mr. Chairman.

Questions

Mr. Newton Mr. Lanier, this...when this compensation is to be paid at fair market value, now...this says when one-third of the property--total ownership of the property is taken, is that right?

Mr. Lanier It says, "When it shall exceed more than one-third of the value of the property or improvements."

Mr. Newton Now, is it intended that this is to be...cumulative or...in other words, if they start out and they take a tenth and then they take another tenth and then they take another tenth--when they get that fourth tenth, they have gone over a third. Then would he be entitled to fair market value?

Mr. Lanier Quite frankly, I don't recall that we considered that type of a situation in our deliberations on this, but I believe, as it's written, it applies in each taking. In other words, it would not be cumulative. I don't...as a matter of fact, I don't even recall us discussing the cumulative effective problem...and we were thinking in terms of a single taking at the time that we drafted this.

Mr. Newton Did you discuss the...with respect to this one-third, the time within which takings could take place?

Mr. Lanier No, I think this was...we were thinking in terms of a taking. In other words if we have to go rebuild a levee or put a new levee and the property was taken, then you would build it and that would be the taking.

Mr. Newton Right.

Mr. Lanier Now, it may take you a while to build the levee, but I mean...I think what you're talking about is several stages of doing something, which we did not contemplate.

Mr. Duval Mr. Lanier, I certainly appreciated your fine explanation of this article, but one thing I don't quite understand. Why is it that one-fourth...if one-fourth of your property is taken, you get ten percent, but if by some chance one-third of the value is taken, you get a hundred percent. How did you arrive at this distinction?

Mr. Lanier This was sort of a value judgment that the committee came to. We felt that under certain circumstances more than the assessed evaluation for the last preceding year should be given, and this was a value judgment that was made on this particular point. You could make it two-fifths or you could make it one-half. This is just a question of where you would draw the line. Part of the problem is the ability of these levee boards to pay. We had our work prepared for us by Roy Aquillard, who is the Director of the Department of Public Works, and the Chief Engineer, Mr. D.B. Cressap, concerning the ability of these people to compensate. In the Mississippi River and Tributaries Project, which is basically the Mississippi River, the Atchafalaya and part of the Red River the federal government pays for the taking, except for relocations of pipelines and things like that. Outside of the Mississippi River and Tributaries Project, the districts themselves have to pay and there they are very limited in many of the districts in their ability to pay. In fact, specifically, in this report it said that most levee districts in Louisiana are not financially able to acquire rights-of-way for enlargements and setbacks at other than the assessed value, where reimbursements are received from the U.S. Army Corps of Engineers. So, here we have the problem of...the compensation for the exercise of the servitude versus the ability of the levee districts to pay. A further complicating factor here, is, as you know, with a servitude the person who owns the property still retains the title. This is merely the exercise of a servitude so if the levee is for some reason taken down, then the property is returned to the person and he can use it for whatever he wants.

Mr. Duval Mr. Lanier, how would this be...how would you arrive at the valuation? How would it be determined when it's one-third rather than...an infinite amount less than one-third?

Mr. Lanier Well, value here, as used, would be the actual market value, or actual cash value as would be set by an appraiser.

Mr. Duval In other words, it would require a court proceeding to determine whether one-third of the property has been taken or not, each time?

Mr. Lanier If...there could not be an agreement between the parties.

Mr. Tapper I understand what you are trying to do, but my question pertains to Paragraph (B) which, as I read it, authorizes levee districts to levy an additional tax on property within the district with no limitations.

Mr. Lanier Well, the levy shall be to pay for the property so used or destroyed, and is used solely in the district where collected. That, as I understand it, is intended to mean that you can only collect enough to pay for that which the value, as provided for in (B), of that which was used or destroyed. Now, by taxing throughout the district, of course, you're spreading the burden of the loss amongst all of the taxpayers in the district, who are the people that get the advantage of the improvement. This is the present law and we could think of no better way to do it, quite frankly.

the authority to tax over and above the five mills?

Mr. Pugh: Was there any reason that you felt that the man ought to also be deprived of his minerals, or did you intend for him to keep his minerals?

Mr. Lanier: I don't think this has anything to do with minerals. The title of the property remains in the person, even though the servitude is exercised. This is just like a...a servitude for any other type of person.

Mr. Pugh: This is nothing but a servitude?

Mr. Lanier: Yes.

Mr. Pugh: Ok.

Mr. Lanier: If you look at--and I've got it here, you may want to look at it just for your own interest, but it's based on Article 665 dealing with legal...I don't think you need...

Point of Information

Mr. Conroy: Mr. Chairman, again, I think it might help if we could have a very brief recess for those who don't have amendments. There are a number of people who have discussed this proposal with me. I would like an opportunity at the front there, to discuss it with people who are particularly interested in this proposed amendment and the problem as to whether something else should be recommended here.

Mr. Henry: Well, normally what we have been doing in circumstances like this...I'll talk over the mike...Mr. Perez, point of information or something, explain to the delegates what you were saying to me. I want Mr. Conroy to know, so we can all...

Point of Information

Mr. Perez: Mr. Chairman, ladies and gentlemen of the convention, I thought and hopefully I can get your undivided attention because this is a matter which is a little bit complicated and yet is well established in the law. I would like for you, if you will, to bear with me while I explain to you the way this situation was.

Mr. Henry: Now, wait, just before you start, in all fairness to Mr. Conroy, because the way we have been doing this is--and the way to properly do it, Mr. Perez, I'm not trying to thwart--or whatever the word is what you are trying to do here. I'm having a tough time talking. But, what we normally do, and properly do is explain the section and then offer the amendments so that the section can be amended as it probably should be. Now, Mr. Conroy doesn't know whether he is a little out of the ordinary. Do you object to this, Mr. Conroy?

Point of Information

Mr. Conroy: Several people who expressed interest in this...going to begin the discussion of the amendment, I...

could explain in more detail, as to exactly how this situation works, it's possible then, that maybe some of these people would not be interested in going forward with the amendment. That's why I was trying to save time. I would ask for a few minutes to explain the provision.

Explanation

Mr. Perez: Thank you, I appreciate the opportunity to be able to explain how this question of compensation works under this particular article.

The article which you have before you now is substantially the same as the article which is in the present constitution with one exception. That exception is where...as the provision has talked about if more than one-third of the property is taken, then you pay fair market value. Let me explain to you how all of this works. When there is a levee setback, and by a levee setback is meant that the riverside toe of the Mississippi River levee is moved backwards--away from the river--then the U.S. Corps of Engineers pays the fair market value for all property taken. In addition to that, you have the Uniform Relocations Assistance Act, which gives a great deal more benefits to the homeowner and even provides that in some cases where you have substandard housing, that you actually build people new houses. We have even taken people who were...we had to use ambulances to move them and bring them in different places. The extent to which levee districts go to take care of people is almost unlimited. There is only one very limited situation where the U.S. Corps of Engineers does not pay when property is taken, and that is when there is a levee enlargement. The difference between a levee enlargement and a levee setback is if the riverside toe of the Mississippi River levee is not moved. That means, that in no case do they take more than approximately fifty feet of a person's land. Now, let me explain the problem that we have. We have, for instance, in one area of our parish, we have one landowner that owns twenty-two miles of land. He has sold off a portion of that land for as much as seven thousand dollars an acre. We would be taking possibly...and will be taking as much as maybe 100 acres of that man's land, but because of the fact that he could establish--this fact that we might have to pay that one landowner, as much as a half a million dollars and have to tax the people throughout the entire district to pay off that one big landowner. That man's land would be worth nothing if he didn't have the levee to protect it. So, that's one side of the coin, when we start talking about the payment of fair market value for property taken. And we have had this situation where we have a Mississippi River...

...in-depth lot, that we would take...taken, then he is...again, understand that in every case other than a levee enlargement,...

...fair market value...land--that land has...

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cannot pay. What we wanted to do is to say "Let's don't leave these levee districts and you have a lot of levee districts who are awful short of money. If they have got to go tax everybody else to pay one or two large landowners, it just isn't fair and isn't right." We tried to hit the fair balance here by providing that if a substantial portion—we said one-third, if the convention feels maybe it should be twenty-five percent, or twenty percent, I have no quarrel with that—but the main concept we are trying to get across is that the man who owns that large tract of land, that land would be valueless if it were not for the fact that he had the levees to protect him. On the other hand, if we are substantially destroying a person's property, we want to pay for it. Again, it's only in that limited situation with the levee enlargement.

Yes, I'll yield.

Questions

Mr. Newton Mr. Perez, I've got a couple of questions. I have heard of instances where there have been taking for levee purposes which amounted to taking a barrow pit which was some distance from the levee and hauling the dirt and building a levee somewhere else with it. Now, what would be the situation there? Would there be an assessed value be paid in that case?

Mr. Perez You are talking about a barrow pit on the river side or the land side?

Mr. Newton The land side.

Mr. Perez Well, I can tell you what we have done in our parish. We have adopted ordinances prohibiting the taking of land unless it's refilled. As a result, in our parish, they cannot dig out on the land side. We prohibit it. So, we don't have that problem. I understood someone else had this problem in another area. I really don't understand it, because I just don't feel that they have a right to do it that way. I would like to look into the problem and maybe see if I can help to get it straightened out. I just had never heard of it before.

Mr. Newton Now, I have another problem here... exceed more than one-third of the value of the landowners property. Is that his total property holdings, or...

Mr. Perez We intended to say the house and the lot, or whatever it was, the total value of what's there.

Mr. Newton Well, I think that needs to be cleared up.

Recess

[The committee recessed.]

Amendment

Mr. Poynter As follows:

Amendment No. 1 [to Mr. ...] On page 25, at the end of line 24, delete the words "a price not to" and delete lines 25 through 31, both inclusive, in their entirety and insert in lieu thereof the following: "fair market value; provided, nothing contained in this"

Explanation

Mr. Conroy The amendment essentially changes the committee proposal to provide that "lands and improvements thereon actually used or destroyed for levees or levee drainage purposes shall be paid for at fair market value." I had hoped, in the recess, to either reach some middle ground or settlement of differences, or possibly pass over the section because the section, as written,

uses the phrase "assessed value." We have pointed out, previously, that at this point in time, this convention really doesn't know what assessed value is. But, I do call your attention to the fact, that at the present moment, the committee proposal of the Revenue, Finance and Taxation Committee is to place land on the assessment rolls at five percent of actual fair market value. That would mean that a man's land who was taken for levees or levee drainage purposes, would be paid five percent of the value of his land, unless more than one-third of his property was actually taken. Now, this seems to me to be unreasonable. I understand the committee's arguments in this area about the levee servitude. I must confess that when I first heard about it, it was quite a few years ago now, in law school. I thought, even at that time, that it was a remarkably unfair system—that a man's property could be taken, under certain circumstances, and he would only be compensated at the assessed valuation, when everybody knew the practice was to assess property at far less than its fair market value. I think that the courts could properly take into consideration the points that are urged by the committee as to the extinction of the servitude and the commitment of that property to a certain servitude, in determining what fair market value is of property taken. But, there are a number of occasions when property is taken for a levee or levee drainage purposes, that are far away from flood problems and far away from the type of spectator that have been described by the committee. Sometimes they are quite far away from a navigable stream. I think that the area, as I said, is one that while in many cases through the help of the United States government, gross unfairnesses have been avoided because the United States government puts up the money to compensate some of the people. There still are parts and occasions within this state where I feel that very gross injustices occur, because of the taking of property for these purposes. The people are given just a token payment for, in many cases, valuable land that's been taken. I urge the adoption of the amendment to provide for compensation at fair market value in such cases.

I yield to any questions.

Questions

Mr. Lanier Mr. Conroy, is it not true that when the riparian servitude is exercised, that the title to the property upon which it is exercised remains in the owner?

Mr. Conroy Not if it goes into the navigable stream, Mr. Lanier, and it might under certain circumstances go to the state, depending on how the levee is constructed and where it winds up. But, if it winds up in the bed of a navigable stream, no, it's no longer owned by the...

Mr. Lanier Well, of course, that's true with all the property...

Mr. Conroy ...Mr. Lanier, this description here applying to levees and levee drainage purposes extends well beyond riparian owners. It applies to land that is quite a distance away from any sort of navigable stream.

Mr. Lanier Oh, now. First, let's clear up this first point. Is it not true that if the stream doesn't eat into the bank, that the owner of the property retains title even though the servitude is exercised to put a levee there or a levee drainage?

Mr. Conroy Yes, and he should be compensated only for the fair market value of what was taken.

Mr. Lanier If that levee was abandoned in the future, or if the drainage was abandoned, would not the complete use of it be returned to the property owner?

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construction of I-20 or the protection involved with maintaining a strong levee system. I would be inclined to believe that more would be affected because of the fine levee system. The point I'm trying to make, that we are talking here about a matter of public good, a matter of public concern because people miles and miles away are affected. Why should the individual who happens to own property there--at a particular point--suffer all the loss when we are all protected? I don't adjoin a levee. But, I'm just...a short distance I am away, I am very vitally affected by how good or how bad that levee system is. For these reasons, I would like to urge any of you, who would, to support this amendment, that anybody that's incurred these losses of land that he at least receive fair market value.

Further Discussion

Mr. Perez I didn't realize that this matter would become as controversial as it is. We have agreed to pass over some finance...the finance provisions of Local Government. Due to the fact that this does have a bearing on finance with regard to the ability to pay for the lands taken and because of the fact that it provides for the payment of the assessed valuation, I do believe it would be appropriate if we would pass over this subject until such time. Therefore, I move that we temporarily pass over this section and take it up with the finance provisions.

Mr. Casey Why do you rise, Mr. Newton?

Mr. Newton I rise to object.

Mr. Casey Well, just a minute. First of all, Mr. Perez is requesting that we pass over the section. The motion is not in order, unless Mr. Conroy withdraws his amendment, in order to permit him to do that. So, we have...We want to find out, first of all, if that's even possible that Mr. Conroy is going to withdraw the amendment, which you really have to object to is the withdrawal of the amendment.

Mr. Conroy, what is your pleasure? You're in the driver's seat on the amendment.

Mr. Conroy I would be happy to withdraw the amendment, provided it would be understood that when the matter comes back up again, that if the matter hasn't been resolved that the amendment can be considered at that time.

Mr. Casey Well, you have a right to submit the amendment, at any time, Mr. Conroy, that's no problem.

Mr. Conroy All right, fine. I'll do that to permit the thing to be passed over, because that is what I had originally suggested should be done with this section.

[Amendment withdrawn. Motion to pass over section 49 adopted without objection.]

Reading of the Section

Mr. Poynter "Section 50. Ports
Section 50. All deep-water port commissions and all deep-water port, harbor, and terminal districts as they are now organized and constituted, including their powers and..."

[Motion to waive reading of the Section adopted without objection.]

Explanation

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, as you know we have several of the port authorities, with all of their specific powers and functions and duties included in the present constitution. In order to attempt to

provide certain security for these ports and at the same time not have all of the various details in the constitution, with respect to the various ports, the committee came up with the approach that all deep-water port commissions--which would include the ports of New Orleans and Baton Rouge and Lake Charles, and the South Louisiana Port Commission which are now in the constitution--that they would continue to exist and it would take two-thirds of the legislature to affect their structure and organization, distribution and redistribution of the powers of any such commission or district. Particularly with respect to the Port of New Orleans and with respect to the other ports, there is a very, very strong feeling that they need the security of feeling that their operations will not be easily tampered with. They were very strong in their feeling that they should remain in the constitution with all of the detailed provisions. This is a compromise position between making these various deep-water port commissions statutory and of keeping them in the constitution. So, I suggest to you that this is as good a compromise as we could come up with, where we would provide that the legislature would take two-thirds of the legislature to affect those various ports.

I'll yield to any questions.

Questions

Mr. Brown Mr. Perez, how do you define deep-water port?

Mr. Perez If you will look in our definition section, on page 28, Definition #11--deep-water port commission and deep-water port, harbor, and terminal districts means "Those commissions or districts within whose territorial jurisdiction exist facilities capable of accommodating vessels of at least twenty-five feet of draft and engaging in foreign commerce." We were advised by these port people, that this would include those various ports along the river from Baton Rouge down river and also Lake Charles.

Mr. Brown Well, you don't read this as prohibiting...in other words, if a port was developed along the Mississippi River in the future this is...I don't read it that way; it's not your intention there would be any pro...

Mr. Perez If it fit into this category, it would be a deep-water port. The legislature could create them, but it would take two-thirds of the legislature thereafter to affect that functions. Again, it's an attempt to, by general provisions, to give the protection to those various ports, which feel that they are the important ports, which feel that they need more than just statutory positions.

Mr. Brown Why ask the question...the Concordia Parish Port Commission is in the constitution, at the present time, and it's on the Mississippi River; and is capable of a ship tying up there, to take a twenty-five foot draft...

Mr. Perez If it does, then it would be one of those included in the two-thirds category.

Mr. Jenkins Mr. Perez, how many ports do we now have in the State of Louisiana?

Mr. Perez Oh, we have many, many ports and that was the reason we tried to distinguish between the deep-water ports and any ports. We have maybe hundreds of...or many, many, I wouldn't know the number.

Mr. Jenkins Are all of them given constitutional status or some of them created by statute?

Mr. Perez There are some created in the constitution and some in the statutes--a greater majority of them are in the statutes.

Mr. Denney. Yes, really, we are instituting a change in the structure and functions of the Port of New Orleans.

Mr. Perez. You would, in a limited number of cases, such as the super port, which was created by legislative act. You would be giving it this two-thirds position, not a constitutional position, but a two-thirds position to require more of a so-called super majority to affect.

Mr. Jenkins. But, I see in here "No authority for the legislature to abolish these ports." Is that correct? Whereas, they could normally abolish them by statute, but under this, they can only "diminish, reduce, withdraw their powers" but they can't actually abolish or consolidate them. Is that true?

Mr. Perez. Well, I suggest to you, sir, that they could so affect their powers and so forth, that there would be nothing left to them. I don't think that would preclude them from being abolished as a practical matter, because they can affect their structure and organization and so forth, and withdraw from it anything they want to.

Mr. Brown. Mr. Perez, you might have answered this. I apologize if I wasn't listening. Why did you again say that you felt that a two-thirds vote was necessary?

Mr. Perez. Because of the fact that we had extensive testimony, for instance, from the New Orleans Dock Board people and the Baton Rouge Port Authority, and quite frankly, I think they felt that because of the type of operation they conducted, that they were really in a type of situation where they had to make long-range agreements with the handling of commerce and so forth. They felt that they should have constitutional status and they wanted the specifics to be in the constitution. What we did, is a compromise situation, was to come up with this particular article.

Mr. Perez. I think that would be some problems in the future as the Port of Baton Rouge and the Port of New Orleans grow toward one another, and it might be in the best interest of the state for them to be consolidated. I know where you live down your way, you are kind of locked in the Port of New Orleans...you might want to develop your own situation down there. Do you think that just might be too stringent, the two-thirds requirement?

Mr. Perez. Well, I can only say to you, sir, that from the testimony we heard, that we...the majority of the members of the committee were convinced that they deserved a position more than just a regular statutory position. They gave many, many reasons as to why they felt they should be in that position.

Mr. Roemer. Mr. Perez, are you familiar with those provisions in Revenue and Finance proposed...it makes them like all other state agencies or political bodies...

Mr. Perez. That was called to my attention at one time...I don't know if it was... "Except as otherwise provided in the constitution."

Mr. Denney. That was my question, thank you.

Mr. Flory. Mr. Perez, in reading the proposal which you tabled, I see from the testimony and the authority, the structure, the organization, the powers and functions of all these ports--in researching the matter, I find that in the '71 Constitution they confirmed that 1911 and the 1898...the state had more power over the...the...

By this proposal aren't we then confirming all of that? How do you find out just what they can and they cannot do?

Mr. Perez. There is no question about that, sir. That's a problem, and any lawyer will tell you that whenever he looks up any question, he has to research the matter. No matter what you put in the constitution--for instance, when you go to interpret the constitution, if you want to know what the constitution of the United States means, I don't know of any lawyer that ever reads the constitution itself; he starts looking into law books as to what that constitution means. So, there is no question about reference; this has been done. But, we know of no other way to handle the matter.

Amendment

Mr. Denney. Section 50, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 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3631, 3632, 3633, 3634, 3635, 3636, 3637, 3638, 3639, 3640, 3641, 3642, 3643, 3644, 3645, 3646, 3647, 3648, 3649, 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, 3672, 3673, 3674, 3675, 3676, 3677, 3678, 3679, 3680, 3681, 3682, 3683, 3684, 3685, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 3694, 3695, 3696, 3697, 3698, 3699, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3708, 3709, 3710, 3711, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3719, 3720, 3721, 3722, 3723, 3724, 3725, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3733, 3734, 3735, 3736, 3737, 3738, 3739, 3740, 3741, 3742, 3743, 3744, 3745, 3746, 3747, 3748, 3749, 3750, 3751, 3752, 3753, 3754, 3755, 3756, 3757, 3758, 3759, 3760, 3761, 3762, 3763, 3764, 3765, 3766, 3767, 3768, 3769, 3770, 3771, 3772, 3773, 3774, 3775, 3776, 3777, 3778, 3779, 3780, 3781, 3782, 3783, 3784, 3785, 3786, 3787, 3788, 3789,

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which called for two-thirds vote, two sections of the Executive Article which require two-thirds votes, and at least one section in the Judiciary which requires a two-thirds vote of the legislature. The port commissions of this state are all business organizations, and it is quite important that they retain their powers and functions and that these powers, functions and territorial jurisdictions be only changed as a result of a so-called "super majority" of the legislature rather than by simple majority of the legislature. The amendment, as proposed, shortens the committee report considerably, and except for the one specific deletion of Section (C), it's practically the same as the committee proposal. I urge its adoption, and I'll be pleased to answer any questions, Mr. Chairman.

Questions

Mr. Singletary Moise, are there any ports or harbors or terminal districts that are not in the constitution?

Mr. Denberry Yes, I believe the... as Mr. Perez mentioned, the "Superport" is not in the legislature. I believe all of the others are in the constitution.

Mr. Flory Mr. Denberry, could you explain to me the reasoning behind the requirement for the two-thirds vote to change the powers, functions, structure, organization of a port, and yet, if the legislature wants to give them some additional power, it only takes a majority vote?

Mr. Denberry Well, the only way I can explain that is that that's the way the committee drafted it, and I adopted the committee's language. I would have no serious objection to changing the second vote to a two-thirds majority, if you feel that's proper.

Mr. Flory Wouldn't it be better to change the first part to a majority?

Mr. Denberry No, I don't think so...

Mr. Flory You're not being consistent, then?

Mr. Denberry No, I don't believe it's inconsistent. **Mr. Flory** As I say, I would have no objection to changing the second to a two-thirds, but I go along with the committee in this feeling that a port, in the business function that it operates under, should require a two-thirds vote to change its powers and functions.

Mr. Ullo Mr. Denberry, did you know that I support your amendment, and that we will follow this up, if your amendment is accepted by this convention, with a Section (C) which will give each parish and each port authority a definite representative?

Mr. Denberry Yes, sir. Thank you.

Mr. Abraham Moise, following up on the line of questioning that Mr. Flory had, in Paragraph (B) where you say, "subject to compliance with Paragraph (A) of this section," doesn't that require the two-thirds vote?

Mr. Denberry No. The purpose of that was that in the event of an addition to the powers or territorial jurisdiction of one port, by some chance should infringe upon the powers or jurisdiction of a neighboring port, we would require then a two-thirds vote to diminish, and therefore, it had to be made subject to that. Some of these ports conceivably could conflict.

Mr. Toomy Mr. Denberry, in your amendment in Subparagraph (A), where it says that "the structure and organization might be affected by a two-thirds vote," is that your understanding that, for instance, the Board of Commissioners of the Port of New Orleans could be changed by a two-thirds vote

of the legislature?

Mr. Denberry Yes, sir.

Mr. Toomy That's a change from what the committee proposes, that by a majority vote, that board could be changed.

Mr. Denberry Well, the committee report, as you recall, provided that for a ten-year period, or until the legislature acted, if it did act within the ten-year period, a majority vote would suffice. Thereafter, it would require a two-thirds vote.

Mr. Toomy It's your understanding that that would just be a single action. The legislature would act at one time to change the board, and thereafter, would require two-thirds vote for further change.

Mr. Denberry That's my understanding of how the committee report was written. Yes, sir.

Mr. Jenkins Mr. Denberry, doesn't your amendment do the same thing that the committee proposal does from the standpoint that it constitutionalizes the Superport, and if the legislature would ever want to abolish the Superport authority, it would take a constitutional amendment, even though it was not created by constitutional amendment?

Mr. Denberry No, sir. I don't think... as a matter of fact, I think the legislature under this amendment, as well as under the committee proposal, could abolish any port by two-thirds vote. I do not believe it would require a constitutional amendment.

Mr. Jenkins Well, it doesn't say that. It says it can diminish its powers, but it doesn't say it can...

Mr. Denberry Well, if it can diminish its powers to zero, that would, in effect, be abolishing the port. I can't conceive that any port would be ultimately, completely abolished, anyway.

Mr. Jenkins Well, if, for instance, L.O.O.P. is built, it may preclude the building of the superport, might not it?

Mr. Denberry It's conceivable, yes.

Mr. Jenkins So, it might want to be abolished, mightn't it not?

Mr. Denberry Yes, but I think you can abolish it effectively by a two-thirds vote.

[Previous Question ordered. Amendment adopted, 90-8. Motion to table, 90-10, tabled.]

Amendment

Mr. Poynter Amendment No. 1 [By Mr. Poynter and Mr. Conroy]. On page 26, line 12, in Floor Amendment No. 1 proposed by Delegate Denberry and just adopted, below the language added by said amendment add the following paragraph:--and this is a little bit different than that Paragraph (C) reads on the long version of their amendment.

(C) The membership of a deep-water port commission or deep-water port, harbor, and terminal district exercising territorial jurisdiction in more than one parish shall include at least one elector of each such parish."

Explanation

Mr. Ullo Mr. Vice-Chairman, members of this convention, my amendment is very, very simple. It just guarantees definite representation to each parish that participates in any port authority throughout the state. I think it would be very proper right now that I would give you a brief

New Orleans was created by acts of the general assembly in 1896. This was done at a time, because of the divided authority of three parishes and a multiplicity of officials with their various fees, and the development of contiguous rival ports would act injuriously to the traffic of the port. The board shall consist, at that particular time, of five members, and all shall reside within the port limits of New Orleans, Jefferson, and St. Bernard. This said board shall have the power to regulate the commerce and traffic of the harbor of New Orleans. As you can plainly see, from the inception, this board was given broad powers, with a lot of ambiguity as far as structure, organization and jurisdiction was concerned. The governor was given the supreme right to appoint all members to this state agency until 1950, when Governor Sam Jones changed the nominating process to civic organizations which is basically the same today. To say the least, since 1896, when this state agency was created, Jefferson, St. Bernard and Orleans have never been able to get together as far as the board and jurisdiction is concerned. This has led to a complete domination of this state agency by New Orleans over the years. Do you know that this domination has produced not a single wharf or docking facility in St. Bernard Parish for over fifty years, nor has St. Bernard been represented on this select board for forty years? As far as Jefferson is concerned, we've had an occasional man because of a constitutional provision that one member should come from the west bank of the river. Jefferson has had to divide this member with Algiers, which is the west bank sector of New Orleans. As far as Jefferson is concerned, we have only had one wharf in over fifty years, and that is Perry Street, which was sparsely used for years, until the time of this convention. We in Jefferson have approximately the same amount of river frontage as New Orleans, but underdeveloped. I only wish every member could ride down this river and see the tremendous inequity that exists there, which has been fostered by the administrative control of New Orleans. Can you realize the tremendous revenue this has cost the State of Louisiana? These are just some of the things, fellow delegates, that I have brought to you. I feel a little brief history is very, very important to enlighten each and every one of you of some of the reasons why I'm in this convention, why I have tried to get some definite representation for the parish of Jefferson. I'm not completely satisfied with this one man provision, as this amendment suggests, but I will say this: I believe it is a step in the right direction, and possibly in future years, the legislature can renew this, and give us more representation. I ask you to support this amend-

Further Discussion

Mr. Cannon Mr. Chairman, ladies and gentlemen of the convention, I have circulated and talked to the members of the Local and Parochial Affairs Committee, and the majority feel that they have no objection to this section. I also would like to inform you that this, in the situation of the Greater Baton Rouge Port Authority and the South Louisiana Port Commission, which is multi-parish situations, this question would not...this would not adversely affect them in any way. So, I think it's compatible, and a situation that I think the State of Louisiana, as well, and we have no objection. I'll try to answer any questions, if anyone would...

this is condensing into... basically on the subcommittee on ports felt all along.

Mr. Denberry Mr. Cannon, I wanted to ask this question of Dr. Ullo, but just to keep the records straight, are you aware, sir, that the present president of the Board of Commissioners of the Port of Orleans is a resident of Jefferson Parish, and that at least one of the past three presidents, in addition, has also been a resident of Jefferson Parish?

Mr. Cannon Yes, sir. We are aware of that, and we know that...what's the man's name...Eads. Eads recently moved from Orleans into Jefferson Parish, so he is now a Jefferson Parish resident. Yes, sir, we were aware of that.

Further Discussion

Mr. Hunez Mr. Chairman and gentlemen of the convention, I thought that the problem probably would have been solved with the other...with the Denberry amendment. I still think it is, Mr. Ullo says that no ports have been built in St. Bernard over the past fifty years. It's very simply because the territorial jurisdiction of the New Orleans Dock Board has not been clearly defined in that area, and what he's doing with this amendment is something that we'd like to do by legislative act, as provided by law. What he's doing is tying up the game. The dock board, not only in New Orleans, in various other places, the reasons for the big trouble down in New Orleans because it's in the constitution. It's spelled out very clearly who shall appoint and who shall appoint, and that's the problem right now because you have people like the Cotton Exchange, and various other people that are no longer in business, making those appointments. Now, they want to come in with another section and say that there shall be membership from these various parishes. Suppose they change that. Suppose that has to be changed. I think some good examples were given about the growth of the port up the river, and down the river, or Baton Rouge. Why don't we just go ahead and adopt an amendment that would say, "as shall be defined by law," in the event that we have to change it again, that the legislature can change it? If we'd have had that prerogative over the period of years, I don't think we'd be in the situation that it's grown to be. St. Bernard hasn't had representation because there is a dispute over territorial limits in that area, and we feel by accepting representation there is some question of whether the dock board has the territorial jurisdiction of the Mississippi River all over the entire parish. We thought we had set it up in committee, and the committee members agreed because they are mainly people that were arguing about that point, but I appeared before them on several times, and asked them to go ahead with the provision that Mr. Tapper and I had, that we shall provide for the members of downstream ports as provided for by law. I think we just did with the lever board. If you put a certain areas that might not even want to be involved in it. So, I'm going to ask you to defeat the amendment, and to go along with the amendment that we have in front of us. I can change it.

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provide that the membership of the deep-water ports shall be as provided by law, just like we did with the levee districts.

Mrs. Warren A question came up that the representative from Orleans Parish had moved into Jefferson, so I'm wondering now when we have a member that moves from one parish to the other one, it leaves that parish without a representative. So, how are we going to really provide for adequate representation from each parish?

Mr. Nunez Well, Mrs. Warren, I think that if we adopt the amendment that says, "it shall be provided by law," we can take care of all those various situations that you are mentioning, that arise. I think Jefferson has had membership on the dock board over the years, either from the west bank representative, or some other. But, they have had some representation.

Mrs. Warren Well, I don't have any...I mean I'd like to see representation and I'm not just really against the amendment for that reason, but I would like to see where...if one leaves, he could be replaced.

Mr. Champagne Senator, you don't have a representative now, right?

Mr. Nunez No, sir.

Mr. Champagne Wouldn't this allow you to have at least one, sir?

Mr. Nunez They don't want one; that's the problem. You see, I'm...trying to correct the problem by law, rather than freeze something in the constitution. It's a problem...where territorial jurisdiction lies. You're freezing in territorial jurisdiction that is not clearly defined, really, in essence, it's not clearly defined.

Mr. Champagne Wouldn't you have a right to define it by the legislature having the vote?

Mr. Nunez Not after what you've just adopted.

Mr. De Blieux Senator Nunez, I notice in the amendment that we just previously adopted that the legislature would have the right to change the organization of a port commission by two-thirds vote. Now, if we adopt this amendment and lock in the membership, one from each parish, the legislature wouldn't be able to change that, would they?...this amendment would be inconsistent with what we just previously adopted, isn't this correct?

Mr. Nunez That's why I'm trying to get you to not adopt this amendment, and adopt the amendment that will say, "as provided by law," and I think we'd have some consistency in the deep-water port structures of this state, as to the amendment we just adopted, or the section we just adopted...

Mr. De Blieux I'm going to ask you this question: couldn't we accomplish what they are trying to do by this amendment, by legislative act as provided in Paragraph (A) that we've just adopted?

Mr. Nunez Well, I imagine you can, but you've adopted that, and we're talking about a new amendment that provides for memberships, and I just don't believe we ought to start talking about memberships again, putting them in the constitution, and guaranteeing representation when it should be loose: it should not be as clear-cut as we want to freeze it in the constitution.

Further Discussion

Mr. Tapper Mr. Acting Chairman and fellow delegates, I also rise in opposition to this amendment for the same reasons that Senator Nunez set forth, and also for the additional reason

that, in the case, let's say, suppose it was for the best interest of the Port of New Orleans to expand--and of course, we're willing to expand into St. Bernard, well, let's say they do--well, they go into St. Charles, St. James, St. John the Baptist, Plaquemines; you lock the number of members in the constitution and you require that each parish shall have a representative, and what are we? We don't have enough representatives to go around, enough members to go around. Like Senator De Blieux pointed out, this is a legislative matter. It is not a constitutional matter, and I want to make it perfectly clear, I hope that the convention does, that by no stretch of the imagination, that anything we adopt here can imply or have any court decide that what we've done or what the people have done, after the adoption of this constitution, is to include St. Bernard Parish under the New Orleans Port because, as was so ably pointed out by Mr. Ullo or Mr. Conroy, one, that this, I reckon the last fifty years, the New Orleans Dock Board has done little or nothing in the parish of St. Bernard. You can't readily understand why the people of St. Bernard Parish don't want to be included in the New Orleans Dock Board. They've set up something that should last for the next hundred years and longer. In the Centro Port in the city of New Orleans, they stop at the parish line on the Mississippi River Gulf Outlet and don't come into, even with their plans for the next hundred years, they don't come into the parish of St. Bernard. Now, can you understand--and I hope you can--why the people of St. Bernard don't want to be included in this dock board? I understand also the argument of the dock board and the city of New Orleans, and I represent...half of my district is in New Orleans. But, most of my district is excluded from the Centro Port. I know you can understand why the people of St. Bernard don't want to be included. For fifty years, they haven't done anything in St. Bernard Parish. For fifty years we haven't had any industry put in St. Bernard. We've had this Mississippi River Gulf Outlet. I spoke to you this morning about having six feet of water in my house; some people lost their homes, lost everything they had. At least one-third of the people of the parish of St. Bernard lost everything they had as a result of this ditch that was dug by authority of the New Orleans Dock Board, and it was dug to the detriment of the people of St. Bernard Parish. No, we don't want any part of the New Orleans Dock Board, and I hope that you reject this amendment.

[Previous Question ordered.]

Closing

Mr. Conroy I'd like just briefly to give you a little history of what has transpired. The amendment, as adopted by this convention, as proposed by Mr. Denney and others, at one time, when it was drafted, had essentially the language of this Paragraph (C). This was discussed with the members of the most port commissions. The delegates here who have ports that are affected, to be certain that there were no problems in it. It was my understanding, my thought, that it was what I would call just a fair amendment and a fair proposal to insure membership on a board, wherever there was multi-parish jurisdiction of a board. Later, it was brought to our attention, the objections that have been mentioned here on the floor, by the delegates from St. Bernard Parish. I listened to the arguments today; I've listened to the arguments before, and I still, frankly, just don't understand the arguments of the delegates from St. Bernard Parish. The amendment, as adopted, provides that the territorial jurisdiction of the ports is not affected by what has been adopted. It is ratified and confirmed. If their position is that the Port of New Orleans does not have any territorial jurisdiction in St. Bernard, then this amendment, which we have proposed, would not affect their membership on the...dock

board. If, however, they do...are included within the territorial jurisdiction, it would insure them membership on the dock board, and it would seem to me that the complaints which they have voiced would certainly be alleviated by having representation on the dock board. I cannot understand the attitude that things are bad, and therefore, some of our property is affected, but we don't want a voice in what's happening. It would seem to me that they would want such a voice. Certainly we do, in Jefferson Parish, want to be assured that we'd have such a voice, and I think that this was the feeling of the people from other port commissions, as well, that it was only a fair thing to do, was to insure such representation. So, we urge you to support the amendment before you. Thank you.

Amendment

Mr. Poynter Delegates Nunez and Tapper send up the following amendment:

Amendment No. 1. On page 26, line 12, add this language "strike out Convention Floor Amendment No. 1 proposed by Delegate Ulloa, et al, and just adopted, and in Floor Amendment No. 1 proposed by Delegate Denney, et al, adopted by the convention on October 4, below the language added by the amendment add the following paragraph:

"(C) The membership of a deep-water port commission or deep-water port, harbor, and terminal district shall be provided for by law."

Chairman Henry in the Chair

Explanation

Mr. Nunez Mr. Chairman and fellow delegates, an amendment...the amendment is very simple. It does exactly what we were talking about before. It allows the legislature, where I think it should be, to set the membership in these deep-water ports. The reason for the many controversies that have evolved in deep-water ports is the fact that they have been set in the constitution. I see no need to put prohibitions...to prohibit certain people from serving or to say certain people should serve. The legislature can clearly define, clearly define the membership of these deep-water ports. If we are going to live with these ports from here on out for the next hundred years, I think we'd be doing this state a great service if we allowed the legislature to do this. Certainly, there is no need to lock into the constitution the provision that we did under the Ulloa amendment. I have no further discussion on it; I just would appreciate very much if you would allow this proposition to be put to the legislature, to let the legislature decide who shall serve. Orleans is represented much heavier than I am, and Jefferson Parish is much heavier than I am, so it is going to come out the way those people want it. No doubt about it; but allow the legislature to do it. I'll answer any questions, Mr. Chairman.

Mr. Pierke Senator, I'm not...I haven't made up my mind on how to vote on this yet, but I want to and time again. That is, the fact that when the Port of New Orleans personnel was not appointed as they are now, they had three thousand deadheads on the payroll and now they are doing with eight hundred. Now, will that be affected by your position? Won't that be affected by your position?

Mr. Nunez Yes, Senator, that's exactly what you have ever made, and I would never sit up here and try to put three thousand deadheads on the dock board.

lature would do it. I think that you'd be adequately represented in the legislature with your twenty some odd or twenty-five legislators to watch out for the interests of the New Orleans Dock Board. I'll be twenty-six helping you do it. I think you've experienced...in the past, I have shown you that I have done that, and I...

Mr. Riecke I'm not questioning that, Senator. All I know is that they did have, in the old days, three thousand employees on the dock board, and now they've got about eight hundred. It seems to me that the status quo is...it looks like we've...they have done a good job. Now, I don't know what affect your proposal...

Mr. Nunez Well, if they've done a good job, the amendment you just adopted probably changed it

Mr. Toomy Senator, by the adoption of your amendment, couldn't the legislature provide for the same provisions that Mr. Ulloa was trying to provide for? That any parish desiring to have membership on the board...

Mr. Nunez Mr. Toomy, that's what I'm trying to say, and that's what I think we ought to do. The legislature can adequately provide for any parish that the port is determined to have jurisdiction in. If they want to have a member on that port, they can determine that that parish shall have membership, and they can determine the method in which that parish shall have that membership by the Chamber of Commerce, whether...if they want to put the Cotton Exchange back, or the...any group that they want to appoint the local governing authority. It makes no difference; it would be at the will of the legislature.

Mr. Weiss Delegate Nunez, we have heard the importance of stability in these ports. It's necessary that they plan for years in advance. Do you think that a future legislator, under the governor who can control that legislature, may not affect these ports from year to year, or over a series of years, by this amendment that you have proposed?

Mr. Nunez No, I don't think so, Doctor. In fact, I think by the one you just adopted you are more or less spelling out the certain people that shall be members, but I don't know how you spell out...How are the other members going to come? What's the limitation on membership?

Mr. Weiss requirement

Mr. Nunez No, I'm not eliminating the requirement for the jurisdiction and the powers and the

(C)--I'm adding a Section (C)--and the membership shall be as provided by law, as provided by law. Now, it doesn't take a two-thirds to pass a law. It takes a simple majority. I don't think (C)

Mr. Weiss But, don't you think a fluid dock board is going to be an unstable one, that you don't know from year to year what it is going to consist of?

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in this state. You are speaking of only one.

Mr. Nunez Well, I'm... I think this amendment applies basically to one.

Mr. Weiss No, it applies to all.

Mr. Nunez It applies to all, but it deals with...

Mr. Henry Now, gentlemen, if you have a question, ask it and let's get on with it.

Mr. Florio Senator Nunez, isn't it true that in response to Mr. Riecke's question to you, that there is a provision in the existing constitution, and the others that we've already ratified by Mr. Denney's agreement, that the people that work for the Port of New Orleans have to be under civil service?

Mr. Nunez Absolutely. You ratified the organization, their form, their powers, their structure, their jurisdictional... their territorial jurisdiction, etc. All we are doing now is the same identical thing we did for levee board members. We are providing that they be appointed by law. You know the mess we have had in appointing levee board members in the past, and you've got the same mess in appointing dock board members. So, what's so wrong in saying they shall be... "members shall be provided for as by law"? I can't see why this is so obnoxious to a lot of people or why it should be so horrendous or why... what's wrong with it. I think it's the proper way to handle it.

Mr. Denney Senator Nunez, as I understood... as I understand your amendment, it now will conflict with Section 50 (A), which provides that the legislature may affect the structure and organization of such a port commission by a two-thirds vote. Your amendment would permit them to affect this by a majority vote. Is that correct?

Mr. Nunez It would affect the members by a majority vote, yes, sir.

Mr. Denney I'm sorry, that's not what I understood you originally to have suggested, sir.

Mr. Nunez Well, that's what... that's what I originally suggested. I suggested that we appoint the members by law, and that doesn't affect your structure when...

Mr. Henry You have exceeded your time there, Senator.

Further Discussion

Mr. Brown Mr. Chairman, fellow delegates, I'd like to briefly support what Senator Nunez has said. I found a point we want to think about in this whole talking about deep-water ports. Many of the things that I think are really difficult for any of us to understand. We don't have a deep-water port in the entire United States, at the present time. A deep-water port, as I've seen plans as to how it may be conceived, could stretch from one end of this state to the other--all along the coast of this state, all the way up to Baton Rouge. This thing has got mammoth proportions. If any of you have ever been up to New York and seen the port authority up in New York, up in New York, the largest port in the entire world, they have a five or six member port commission up there that runs the whole show. These guys are professionals; they are paid thirty or forty thousand dollars a year. They run the whole gamut--the airport, the shipping, the trains, everything up there. We're in the position that one day, we might be in the very same circumstance. A deep-water port affects us up in north Louisiana. Very much so, in terms of the trade and commerce that could come about. So, I think that Senator Nunez has the right idea to give us this flexibility

to allow us, in years to come, to structure a membership on a port authority that could take care of a mammoth operation to which this is conceived. I think he's got a good idea to leave it up to the legislature, and I would urge you to strongly support it.

Questions

Mr. Willis Senator Brown, this is a friendly question because I commend what you say and ditto Senator Nunez. If it is too much to expect loyalty against self-interests by a legislator, don't you think that in the name of economy, efficient administration, and fairness that the legislators who are of no interest will equalize, and, so, make a just arrangement in the matter of appointments?

Mr. Brown Well, I think very much so. Like I say, this is something that transcends a small parish boundary. It's something that affects the entire state; it's of the upmost importance to us up in north Louisiana because it affects the vital economy of the entire state, and for that matter, the entire South. Now, I think we've got to look at a little wider range view. Your point is well taken.

Mr. Willis Precisely. Now, my next question is, that as it must, this provision applies equally all over Louisiana so that were the shoe on the other foot, the same principle would apply, wouldn't it?

Mr. Brown Very much so, very much so.

Further Discussion

Mr. Cannon Mr. Chairman, ladies and gentlemen of the convention, I would hope that you could appreciate the deliberations, I'm sure you had them in your committees and subcommittees, which we had in our committee and subcommittee concerning this unique type of business where our competition is not with each other, and not with other businesses; our competition is with the Port of Houston, and the Port of Mobile, and other ports along the Gulf. What I would like to say in answer to Senator Nunez's proposal, is that I am strongly, strongly against it. Let's take a look right now. What does it take right now to change membership on a port commission? I think there are about ten of them in the constitution. There are thirty-seven, I think, active port commissions right now in the State of Louisiana. Well, of these that are in the present constitution, and all the deep-water ports are in the constitution, it takes a constitutional amendment to change their membership, to change their structure, organization, or anything. The other extreme is a simple majority of the legislature. It was the feeling of the committee and the subcommittee that the two-thirds vote, this super majority, was a good thing. This would be a compromise. How do you compromise a compromise? You don't. You settle one way or the other. I'd like to say this, particularly about the Port of New Orleans and the Port of Lake Charles. They have many authorities of the with international trade and port operations. The Port of Lake Charles, I think, even includes one member of the AFL-CIO from that area. The Port of New Orleans does not. Baton Rouge and the south... the Greater Baton Rouge Port Commission and the South Louisiana Port Commission members are nominated by the governing authorities of the city of Baton Rouge, of the parish of East Baton Rouge, of the city of Port Allen, the parish of West Baton Rouge, the parish of Iberville, and the parish of Ascension. The governor has one appointment. The South Louisiana Port Commission is done similarly--the same way both groups have to put three members to the governing authorities of the governor chooses one. The South Louisiana Port Commission, the majority of these members are appointed by the three police juries of the three

Saint' parishes: St. John, St. James, and St. Charles." I knew I'd get them; that's what I get for not being Catholic. But, the police juries submit panels of names to the governor, from which he chooses one. Let me get this straight. The two most important things in Louisiana are water and ports, are different from levee boards. This is business. The impact of the Port of New Orleans on the economy of the State of Louisiana, primarily located in that area around the city of New Orleans, is approximately \$1 billion a year. A large part of the salaries and incomes going into people's pockets with which they can pay their bills and hire other services and buy goods. The Greater Baton Rouge Port Commission has an economic impact of \$1 billion a year on the economy of the State of Louisiana. These are two ports which are in the top ten in the United States. Lake Charles is one of the teens, I think it's about seventeenth in the country. But, I say these are tremendous economic impacts on the community and I say, if this appears to be a compromise, do not be deceived by it. I think the committee and the subcommittee compromised themselves from what now exists to change membership, which is a constitutional amendment; and I think this is the extreme, I am not in favor of it. Thank you, sir.

Further Discussion

Mr. Tapper. Mr. Chairman, Mr. Anzalone, and other members of the...delegates, I rise in support of this amendment for several reasons. I stated some of the reasons before, but an additional reason is this: the amendment that was adopted, the Denney amendment, makes no provision for the Denney provision whatsoever for the membership. If you will read it, you will see. It makes no provision for the membership or for the change in the membership. In addition to that, in due respects for Mr. Cannon, the legislature appropriates, directs the additional money to the Illinois State Bar Association. In addition to that, the legislature every year, passes legislation which affects your daily lives and the lives of all of the people of this state; legislation that affects the lives much more than port authorities and the levee board decisions. We had no say in the decisions of the legislature on capital punishment. If you take a man's life, there is nothing left for him; he has nothing left. Yet, the legislature passed that by a majority vote. The argument for two-thirds does not belong here. We in any democratic body must be in the majority. We in any democracy here should be governed by a majority. Ladies and gentlemen, I hope that you will vote for this amendment because without it, there is no setup, there is no ruling in the amendment as adopted, the Denney amendment, for the membership for the appointment of the membership of these boards, these port authorities. I hope you will vote for it.

Mr. Dennyery Mr. Tapper, don't you agree that when...in my amendment which reads that "the [redacted] Department of the Interior and Department of the board," that that will permit exactly what you said it did not permit?

Mr. Tapper No, I do not agree, Mr. Dennery.
structure and organization; however, there's
nothing there insofar as the matter of appointment

[illegible]

Mr. CAGNEY. Did you see that the first paragraph in the last is identical with the second where you are talking in the way it is today.

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locked in and then the provision says that it can be changed by a two-thirds vote, do you not agree that my amendment takes care of the situation except that it is by a two-thirds vote?

in your amendment.

Mr. Denney That's correct, sir.

Mr. Tapper I'm opposed to that also, Mr. Denberry

Mr. Dennery Thank you, sir.

Mr. Pugh Mr. Tapper, some people already have their ports. I agree with your analysis of Section (A) and the first paragraph. Insofar as Section (B) is concerned, obviously, there was no provision insofar as memberships are concerned for any new port, in the event somebody else wanted a port. Isn't that correct?

Mr. Pugh. You are right, Mr. Pugh. That's something I had forgotten to mention. If the event there is a necessity for a new port to be created or, let's say, a consolidation which would result in a new port, as Senator Brown mentioned something about the possibility of a statewide port from one end of the Mississippi to the other in the state, there is no provision in the Denny amendment for the membership.

Mr. Weiss Delegate Tapper, in light of Delegate Denney's remarks, wouldn't you say that this amendment is simply one to reduce the vote of the legislature from two-thirds to one...just the majority in changing the membership of the ports' boards throughout the state?

Mr. Tapper No, Doctor, that isn't the only purpose for it, but that is one of the purposes.

Mr. Weiss That is not the only purpose, but that is a major purpose.

Mr. Tapper Yes, definitely. I explained that before. I think it should be by majority vote... The legislature by a majority vote actually directs the lives of all the people in this state, and I can't see why they couldn't in the case of the port authority.

Mr. Roy Mr. Tapper, don't you agree that even though Mr. Denberry's amendment is an improvement over the committee language, that requiring a two-thirds vote is nothing more than a stymieing effect on the rest of the state and allowing some little port commissions to stymie the state in the future?

Mr. Tupper: Yes, I agree with that.

Mr. Tobias: Mr. Chairman, fellow delegates, which, in effect, allows a change of ports in the city of New Orleans and other places, but especially will go home, we might as well go home. You may well say that this is the largest port in this country--second. It's a big business. Three billion, two hundred million, three billion, two hundred million dollars worth of money. It provides thousands upon thousands of jobs. It's a business, it's a competitive business. It's got to be run as a business. It cannot be subject, or should not be subject, to political breezes. It is essential, absolutely essential, that the two-thirds provision be retained. The port has got to remain competitive. The other

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amended, guarantees membership to each parish in that district on that board. If you adopt this amendment, we're in bad shape.

Questions

Mr. Reeves Mr. Tobias, you mentioned the city of New Orleans port. Are you aware the city of New Orleans has no port?

Mr. Tobias I am...you are correct.

Mr. Reeves That the great State of Louisiana whose taxpayers throughout this state, are you aware that they are the ones that support this port? Are you aware of the amount of money that the State of Louisiana, the folks in Winn Parish, put in to the Port of New Orleans?

Mr. Tobias They put in money, you are correct. But, let me say that the benefits are derived throughout, and that to protect it guarantees it throughout the state.

Mr. Brown Mr. Tobias, this is what concerns me, and let me ask you if this concerns you. Do you think there may be a problem if you have a deep-water port authority that maybe has twenty-five parishes in it? I want to emphasize how big these deep-water ports are. Do you think it will be in the best interest of the Port of New Orleans, if it is made a deep-water port, to have twenty-five different representatives trying to tell you your business, someone from Ascension and St. James and all of those parishes down there all serving on your board telling you what to do? Because that's what's going to happen under the amendment of someone from every parish. Do you think that's in the best interest of the Port of New Orleans to have someone from every single parish trying to tell you your business?

Mr. Tobias That's precisely why I favor the two-thirds provision.

Mr. Brown Well, this has got nothing to do with two-thirds. This is giving everyone representation.

Mr. Tobias I realize that. That's why I want... As a practical matter, nothing like that is going to happen for a long time to come. It can be corrected by constitutional amendment. A port is a business. It's got to be protected.

Mr. Tapper Mr. Tobias, I know you said that this port is operating very efficiently, and I don't doubt that. Are you aware of the fact that two years ago the legislature had to come up with some thirty million dollars to bail the Port of New Orleans out, because they were in so much debt? Did you know that?

Mr. Tobias Yes.

Mr. Tapper The people of the state are paying the bonds.

Mr. Tobias Mr. Tapper, let me, also, say that I recognize the political problem that St. Bernard Parish has in this matter, and that I understand why that you are opposed...are in favor of this amendment.

Mr. Henry Mr. Tobias, on a point of information, someone just pointed out if you would talk a little faster, you could have said what you said in ninety seconds.

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, you haven't heard this French voice in several days now, but I must rise, as much as it hurts me to ever oppose a good friend like Nunez and Tapper, good friends like those people. I know they appear before our committee on many occasions fighting

for their rights in the St. Bernard area. I sat on this committee for eight months, and there is no other action greater than the action involving the Port of Orleans. We've heard input from many, many people in that area. I'd like to impress on you that I feel this is a bad amendment, and I'm going to oppose this amendment for these reasons: that I feel that the Port of Orleans belongs to all of Louisiana. I am deeply concerned in Lafayette Parish, as I am sure the people in north Louisiana are, about the good that has come from this port. This is the reason why we are enjoying Louisiana today, as you well know. We sent a man to buy the Port of Orleans from France, way back yonder, and he came up with the whole... of the Louisiana Purchase. It's been a great, important part of the lives of all people in the Mississippi Valley for many years. I can tell you in simple, few words that all the problems involved in the Port of New Orleans in the last two years has been involved in a somewhat of a jealousy because of the membership of the commission that runs this port. My committee, my subcommittee, took a tour of the Port of Orleans. We spent two days down there analyzing, to try and analyze the problems that existed because we were vitally concerned. We had a committee of a five man commission, with a hundred and fifty million dollars a year annual operating budget.

One hundred and fifty million dollars annual operating budget is a big business in Louisiana. I feel that we ought to look at this amendment real, real hard. What it does is reduce the appointment of this commission from two-thirds to one-half, and as a matter of fact, we don't need the amendment at all. I think the way we are operating now, has been brought out, is very, very good. We had discussed going as much as a seven man commission to operate it. After long, many hours of debate, felt that it would be better to leave it at a five man committee. I said to you, fellow delegates, this is a very, very serious business. I suggest that you vote against this amendment. Thank you.

Further Discussion

Mr. Gauthier Mr. Chairman and members of the delegation, it's fourth down and time to punt. Some four months ago, members of the Port of Orleans, parish officials from the city of Orleans, and city officials from the city of Orleans, and parish officials from my parish contacted me and other delegates in regards to the port problem, its makeup, and its jurisdiction, which has been a problem for some time. They said at this time, "We are working on a solution. Give us time and we will work it out." They took one month and we were a little bit closer, we had made a few yards. It was about second and eight. They took another month and we got a little bit closer. We might have picked up three yards. It was then, third and five. Then, in that last month, on third down, the Port of Orleans came up with its members. We met with Jefferson Parish officials, and we met with city officials. In fact, on this occasion, I managed to get invited to two lunches because my office is in Orleans, and I live in Jefferson. I had dinner with Orleans, and I had lunch with Jefferson with the court. We discussed those problems. I guarantee you, after getting treated to both lunches, I thought we were right at making that first down. It looked real good for a while. Then, it all fell apart. We lost yardage. Now, we are fourth and a long ways to go. That's why I had never reached the conclusion that this is a continuous problem; it's a problem you're going to be faced with year after year. It is rightful, belongs in the legislature because we cannot cope with it, we cannot handle it. It is a legislative problem, and I suggest to you that we can do justice to the port systems in this state by leaving them where they belong—in the legislature. Thank you.

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Mr. Roemer: ... your remarks, and don't you know that I think that the constitution and the state is not going to rise and fall on this amendment. I sure wish that you would move the previous question so we can get on with the business, soon?

Further discussion

Mr. Chairman and delegates: ... extremely important amendment, and we feel as far as our deep-water ports are concerned, it's certainly vitally important to the stability of our port. The most important thing that we can talk about is not just the structure and organization and distribution and redistribution of the powers, but it's the membership of the board. The very members that are going to exercise those powers and functions and assist in establishing the structure and organization. That's the heart and soul of the conduct of the business of the port. How much more important can it be? Here, we are attempting to delete the very heart and soul of the operation of the port from the protection of a two-thirds vote of the legislature and put it in a separate, isolated area now, I just wonder what really motivates the intention behind a strong move to adopt this amendment. I don't question the immediate authors of those amendments, Mr. Tapper and Mr. Nunez. I know they are certainly well intentioned in what they are attempting to do. Do you know, delegates, just some of the information about the port is astounding? The cost of a vessel entering the port, the large vessel, it costs them between ten and twelve thousand dollars a day just to stay in the port--the cost of their operation, the cost of their wages for the seamen. Do you know what happened because of the instability of the Port of San Francisco which was the queen of the Pacific ports? It went from first down to eleventh place, and they are struggling. They are trying to get back on their feet. Every ton of merchandise that goes through the port, any port, leaves behind twenty-five dollars in the form of wages and benefits for our laborers. Gentlemen, this is vitally important to the Port of New Orleans. I would hope to see the Port of Lake Charles and to the Port of East Baton Rouge. There is nothing more important than the membership of the board that conducts the business and activities of any port. We must give it stability; we must avoid any cloud that could come upon the port which could diminish the effectiveness of the business of that port. I urge the rejection of that amendment.

Question

Mr. Roemer: I have only one. Tom, is it the... do you want to leave the impression with this convention that we are the passage of an amendment like this that put the Port of San Francisco down from first to eleventh?

Mr. Casey: Mr. Roemer, you know I'm not pretending to imply that at all. But, one thing that did cause it to go down is something I think that your committee is handling, and that is the autonomy of the budget of the particular Port of San Francisco. Also, I understand, if I'm not mistaken, and I may be wrong, that the selections to the membership of the Board of Commissioners...

Mr. Roemer: That is another thing that lead to...

Further discussion

Mr. Chairman and delegates: ... fellow delegates, I just can't understand the amount of accusations that's been hurled from this...

that, especially me. Mr. Dennery, if you will pay attention to me, when you and your group worked out the compromise on the port, I told you I would support it and I did. I told you I don't think we should spell out any membership, or any prohibition against a member, or any inclusion of any member. I voted for you, and I voted against Mr. Ullo's amendment. It just sort of gets to you when speaker after speaker gets up here and says we are trying to politicize the dock board, we are trying to politicize the New Orleans port. How? By letting the legislature say who the members are; by telling the legislature that you shall appoint, or you shall make laws that would apply to the deep-water ports in this state. If that's politicizing, then I think we just politicized the whole state. Well, I tell you. The Port of Houston has ten counties. They have nothing that says every member every county, has to be represented in that dock board or that port. This is not a Port of Orleans or a Port of St. Bernard or a Port of Jefferson; really, it's a state port, operated by state funds. About four years ago, I think, we passed a thirty or forty million dollar bond issue for the New Orleans Dock Board. I think we have some gasoline tax money that all the taxpayers of this state pay for. I think they produce some revenues, and everybody that's involved in them--it's a state port. I don't want to come up here and be against the port, because it looks like everything we get involved in on it, if you say something against the aristocracy, you are against the port. But, I believe that's what it's coming down to. That's exactly what it's boiling down to, to me. If you try to change one iota the way they are presently appointed, then you are against it. You are against what's been going on. Well, maybe somebody ought to be against it, and that certainly wasn't the intention. The legislature shall provide by law how those members are appointed." Mr. Dennery told me he was going to be for that, by the way. I still don't believe that I'm tampering with the provisions in (A), (B) or (C), by saying "The legislature shall provide the members"--not at all, not at all. We are involved in a big controversy about the efficiency of the New Orleans Dock Board. I think we can do a lot of talking on that if we really wanted to. But, that's not the cause; it's not my cause, it never was. I'm only trying to get a method of appointing these members, one of the methods you can get if you don't want to freeze into the constitution the archaic method that they now use. I'm only trying to create three thousand deadheads. If they operated like that, they should have gotten rid of them all, but some of them are still there. The method of appointing them is still there. I see nothing wrong with trying to find a legitimate method that we can all live with, a method that we don't freeze in certain parishes that are around the port. If they want to expand, allow them to expand. We have frozen into the constitution their functions, their powers, their duties, their jurisdiction. All I ask you is to go along with us and allow--as you have done on a number of occasions--allow the legislature to make these...

Question

Mr. Chairman and delegates: ... the lives of people, without which they wouldn't need jobs, we put this phrase in "as provided by law." ... all over these articles of the constitution that we have created, we have created a system above the lives and the well-being of the people all over this state.

Mr. Chairman and delegates: ... Mr. Tapper...

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tainly, I respect and admire...and certainly, the New Orleans Dock Board is a vital function of this state. I would never do anything to harm it. I don't believe, in any stretch of the imagination, to let speakers come up here one behind the other and say "This is going to politicize the port." No way. This is what they want, really. I don't want to join hands with Jefferson; that was a... look at the original amendment; look at the original proposal; we were spelled out in it because there was a move on to control the New Orleans Dock Board, to tell you the truth. Let's tell the truth if we want to tell the truth about it. I had said I don't want no part of it--they wanted to appoint two from Jefferson, one from St. Bernard, and two from Orleans. So, that gives three to two. I don't want that. I'm sure you members from Orleans know I didn't want that. Never have I advocated that. That's not why I came up with this amendment. I would not have come up with it, had not you adopted (C), because I agreed with Mr. Dennery and his whole proposition. So, I ask you to adopt this amendment. It doesn't do violence to the port; it doesn't do violence to the dock board; it doesn't do violence; it doesn't politicize it; it just allows us to provide by law how those members shall be appointed. Thank you.

[~~Record vote ordered. Amendment withdrawn.~~
44-58. Motion to reconsider failed.
Motion to amend to other items
adopted without objection. Motion to
take up Reports of Committees adopted
without objection.]

Reports of Committees

[1 Journal 546]

Announcements

[1 Journal 544-545]

[Adjournment to 1:00 p.m., Oct.,
Friday, October 5, 1973.]

Mr. [E.J.] Landry Dear Father, You taught us how to pray over two thousand years ago. Your prayer has never been improved upon by the mind of man. You said "Pray Thusly: Our Father who art in heaven, hallowed by Thy name. Thy kingdom come. Thy will be done on earth, as it is in heaven. Give us this day, our daily bread, and forgive us our trespasses as we forgive those who trespass against us." Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES LYING OVER

Mr. Willis Mr. Chairman and fellow delegates, mine is not a grievous one; that is to say: I have no grief. Indeed, it is in an expression of happiness. By virtue of the authority vested in me as spokesman of the silent and suffering majority, I present this proclamation to the Rare and Radiant Rayburn: It takes great courage to take the hard knocks like a man.

Even the weak are mighty when their hearts are combined with honor and love of discharging duty. The winner is always he who gives himself to his work.

You are in the silent majority--so hang on! The eternal stars shine as soon as it is dark enough, and they will splash our horizon with light tomorrow--so hang on!

Complete your climb with care, confidence, and courage.

Nothing is too high to a resolute mind--so hang on!

Stay in the front rank of battle.

The financial loss is much; the family loss is more; the loss of courage is all--so hang on!

Every worthy work looks at first impossible.

A great deal of talent would be removed from our midst if you quit--so hang on!

Now you are in this jam, and it seems you can't hold on a minute longer; that is the time and place the tide will turn--so hang on!

Courage respects courage, and courage is contagious--so hang on!

Finally, hang on so we can all hang on!

It is better to wear out than rust out so--hang it in there, baby!

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 17 introduced by Delegate Perez, Chairman on behalf of the Committee on Local and Parochial Government, and other delegates, members of that committee.

A proposal making provisions for local and parochial government, levee districts, and ports, the committee respectfully request the convention to respect thereto.

The convention adopted--as the status of the proposal--the convention adopted the first thirty sections of the proposal as amended, with the following exceptions being two, four, ten, twenty, twenty-five, and thirty, which were deleted. It then voted to pass over the financial sections constituting part two, being Sections 31 through 43. Subsequently adopted provisions with respect to the financial sections, being Sections 44 through 50, and the committee respectfully request the convention to consider Section 50, dealing with ports.

I proposed by Delegate Denery, and others, and adopted by the convention on the second day of the language added by the Denery amendment, strike out the word "All" which is the word right after "Section 50," and insert in lieu thereof the following: "Subject to and not inconsistent with any provision of this constitution, all." So, the beginning of it would read: Subject to and not inconsistent with any provision of this constitution, all deep-water port commissions and all deep-water port, harbor, and terminal districts as they are now organized and constituted, including their powers and functions, structures and organizations, and territorial jurisdiction, are ratified and confirmed and shall continue to exist, and so forth.

Explanation

Mr. Conroy As the proposals presently stand, there is an inconsistency between the operation of the dock board and Committee Proposal No. 15 of the Revenue, Finance and Taxation Committee, which contains certain concepts and ideas with regard to public finance that include all money going into the state treasury and tighter central control. I think that this problem has many ramifications and has effect on a lot of different agencies of the state. The committee heard some of these agencies. I think it requires some study as to its overall effect, not only on the dock board or any port commission, but on other agencies as well, which the Revenue, Finance and Taxation Committee has studied. But, the only purpose of this amendment here is to defer the discussion and controversy that might exist over that concept and proposal, to the proposal of the Committee on Revenue, Finance and Taxation. It makes the concepts here subject to whatever is decided there, ultimately. I had spoken to some of the people who proposed this on behalf of the port commissions, and had understood that there wasn't any problem in deferring this discussion and controversy to that point. There seems to be some uncertainty now as to whether that is the case or not, but in any event it was in that time sequence that this amendment was prepared and submitted, was to try to defer that controversy to a point where the overall concept of state finances could be discussed and resolved by the convention as a whole, and the matter resolved then. I'll yield to any questions.

Questions

Mr. Lanier Mr. Conroy, this proposal deals with deep-water ports. I haven't read your Article IV, but would it apply to deep-water ports as well as other ports?

Mr. Conroy It applies to all state funds.

Mr. Lanier Well, the question is, do you want the Greater Lafourche Port Commission, which has its own affairs there. Your proposal would mean that all of the money in the Greater Lafourche Port Commission would have to come to Baton Rouge and it is back to the state treasury.

Mr. Lanier Mr. Lanier, that's exactly what I said. I said all money from the port commission would go to the state treasury. That's the purpose of it, to bring about centralized management of funds. But, it's within that area, rather than just isolating out deep-water port commissions, that this amendment is proposed. That's the purpose of it. I'll yield the effect of Committee Proposal No. 15.

Mr. Lanier Well, when the amendment is adopted, it will mean that all money from the port commission will go to the state treasury, and that's the effect of the amendment.

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tion? Is that correct?

Mr. Conroy Well, the language used here is, I think, somewhat familiar. I'm not the original author of those particular phrases, but my intention in using the same phrase was that there not be any misunderstanding about what these different phrases meant, so we could discuss them all at one time and hopefully change them all at one time. I would have chosen different wording initially, but I did want to parallel the language that is used in other parts of this article.

Mr. Lanier Well, what I'm getting at is those who were here that wanted to consider the interest of deep-water ports would actually have to watch every provision that got proposed from now on out to make sure that it didn't affect this provision.

Mr. Conroy This is true of the Local Government Article generally, Mr. Lanier. On many sections, as you know, that that same phrase appears, and I think the same concern applies to all the places where it appears.

Ms. Zervigon Mr. Conroy, to follow up on Mr. Lanier's line of questioning, can you tell me why you didn't phrase it "subject to the budgetary controls specified elsewhere in this constitution," or something like that? I have no objection to postponing the fight, but this is really rather "buying a pig in a poke," and it's rather like not laying something on the table, don't you agree?

Mr. Conroy Ms. Zervigon, as I explained before, I used the phrase simply because that is the phrase that's used in, I think, at least four other sections in this article at this point; and I didn't think it appropriate to suggest, at this point, a difference in language and attribute some other meaning to the other four times that this convention has seen fit to use that same phrase.

Ms. Zervigon Well, isn't it correct that the other four times that the convention used those phrases, they really meant the entire constitution as it is or will be drafted, and you really have reference to one particular section?

Mr. Conroy I'm not sure that that's so. In any event, insofar as this might involve expropriation authority, or other things, the same arguments could be raised here about the effect of the Bill of Rights and all of that. None of which arguments entirely appeal to me, but nevertheless, this convention has on, I think, three or four or five different occasions seen fit to use that language.

Ms. Zervigon Did you know that I voted for those things earlier, but now I've begun to be a little afraid of them because I don't know what they include. You haven't the same feelings?

Mr. Conroy Well, I have the same feelings, but that's why I'd prefer to continue to use the same phrase, and if possible, at some point when we understand what we've done, change them all because I don't think they're the best we've decided for the outset. I probably should have had Mr. Gravel present this amendment anyway.

Ms. Zervigon Are you hoping that each time you open that poke, you're going to find a better looking pig in it?

Mr. Willis Mr. Conroy, if I can play a little bit on words--she talked about a "poke"--I'm going to talk about "hocus-pocus." This amendment... it seems to me from a grammatical standpoint, if something is "subject to," it is "not inconsistent with." If it is "not inconsistent with," it is therefore "consistent with." Now, if it is "subject to," and "consistent with," then there is some redundancy, don't you suppose?

Mr. Conroy Yes.

Mr. Willis Now, assuming that's so, you are on the same committee that I am that's working Sunday... Style and Drafting? Do you think that we can make that phrase or this subsection clause, turn a square corner in Style and Drafting? I think we have the power.

Mr. Conroy Yes, I do, and I think that by the time we get there it will be clear as to what it's meaning. That's what I meant earlier, though, when I said I'd prefer to use the same phrase here so that there could not be a suggestion made that at different points, a different phrase having been used, that different significance had to be attributed to the phrase in the different places it's used. Just trying to be consistent with the phrase used elsewhere, and hopefully change it everywhere it appears.

Mr. Willis I understand you to say that we will... in Style and Drafting, define with fastidious precision what each phrase means, and if it has a double meaning, we will clip half.

Mr. Conroy I would hope so.

Mr. Willis There is a record now.

Mr. Jenkins Mr. Conroy, the way this section reads without your amendment is that all powers and functions ever granted to any of these commissions by statute will be ratified and included in this constitution. Aren't we really buying a "pig in a poke" if we don't adopt your amendment? Isn't that really the fact, because we don't know what's been in these statutes in the past, have we... do we?

Mr. Conroy I don't.

Further Discussion

Mr. Casey Mr. Chairman and delegates, I certainly understand what Mr. Conroy's intentions are, and I know he's quite sincere with his amendment. I'm suggesting that we delay any amendments on handling of funds--port authority funds--until we arrive at the revenue and taxation area of the constitution. I know there is some merit to what his suggestions are, but he's using some extremely broad and general language here which connects this, not only to the revenue and taxation section of our new constitution, but to every other proposal. Now, I know his main concern is the handling of state funds--the central management of state funds--and that the recommendation of the committee will be that all agencies will have their funds funneled through the state treasury, and maybe, perhaps, that might be the best thing to do. I don't know, but I've already indicated to Mr. Conroy that I would suggest that that's not even the type of thing that we should constitutionalize, because what may be good today for handling of state funds, two years from now may be the worst thing for certain of our agencies. I would like to inform the convention of this: that we presently have a central cash management law which the legislature put into effect a couple of years ago and which I coauthored. I certainly concur in that concept, but in that particular statute, the legislature unanimously, to my knowledge--and had the concurrence of every legislator in this convention--specifically accepted port authorities. Because of the peculiar duties of the ports and because of the peculiar marketing of the ports, who were involved in international trade, need immediate availability of funds and cannot afford to go through the delays in the process of obtaining these funds from the state treasury. As I mentioned to you on yesterday, the Queen Port of the Pacific, San Francisco, once was one of the first on the Pacific coast, and is now in eleventh place, and one of the contributing factors to their loss of prestige was the fact that they lost budgetary control. They lost budgetary autonomy. I know that's his intention here to tie that into central cash management, but I would suggest to you, we're treading on very dangerous ground. Not only here,

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but even under the revenue proposal, to require constitutionally that every agency must do it. You must leave that to the good common sense of the legislature to decide from one year to the next what may or may not be in the best interest of our individual agencies. Whatever you do, don't tie us down now. If the legislature—I want to point this out—we're not prohibiting cash management of port funds. Under the proposal—under the Denney amendment as amended by the Ullo and Conroy amendment on yesterday—all we're saying is that in future years it's going to require a two-thirds vote of the legislature in order to require the process that port funds will be funneled through the state treasury. I urge you to defeat this amendment at this time because we are buying some "hocus-pocus" as Mr. Willis said, and maybe a "pig in a poke." We don't know the overall effect of connecting this proposal, not only to the revenue section, but also to any other section of the constitution that we have or will adopt.

Vice Chairman Roy — the Chair

Mr. Jenkins Tom, doesn't the only thing this amendment do is say that "subject to and not inconsistent with other provisions of this constitution," and so forth? Isn't that all it does?

Mr. Casey That is what it does, and I think Mr. Conroy was extremely frank in expressing his intention that we tie this particular proposal into the requirement under the constitution that there be a central cash management of all state funds, and all funds will go through the state treasury, and, Mr. Jenkins, maybe that's the best thing, but...

Mr. Jenkins Well, even though he has said that, that really is just one tiny part of what this section would be subjected to under that language, wouldn't it?

Mr. Casey You're absolutely correct and that's precisely one of my other concerns, which I've indicated.

Mr. Jenkins My primary question is, if we're going to go through and ratify and confirm, as this section does, all existing statutes and other constitutional authority granting to ports certain powers and functions, shouldn't all of those statutes, all of those powers, all of those functions, be subject to and not inconsistent with this constitution?

Mr. Casey I don't know necessarily...I don't think that agencies such as the port authorities should have their powers and functions reduced, diminished, and lessened by virtue of language of that type, less than what they have today to operate on.

Further Discussion

Mr. Roemer I've got two questions. You want to go with the questions first, Joe, or...I support the Conroy amendment. I think it's a very, very important issue. This idea that state agencies, regardless of their vested powers and interests, regardless of where they lie in our state, to the South or the North, or on the water or inland—regardless of their size, and regardless of their particularities and peculiarities—would try to circumvent cash management in this state. I think that's the guts of the issue here and that's what we're talking about. I have a quibble with you about whether this language does it specifically or whether there can be better language.

Now, I think it's fair to say that the Port of New Orleans, the Port of Mississippi, the Port of Louisiana, and the Port of Texas, all have the same revenue, finance, and taxation, to talk about the Port of New Orleans, to talk about the Port of Mississippi, to talk about the Port of Louisiana, and to talk about the Port of Texas, all have the same revenue, finance, and taxation, and that's hard for you to see. I think it's fair to say that the port is different. Well, I want to know

how the port is different. It borrows money from the legislature; it comes to the legislature for certain requests; does not in turn submit the kind of budgetary reports that other agencies do. The Port of New Orleans is not just in the province of the parish of Orleans. It affects all of our state, and monies derived therefrom, or put therein, are of concern to us all. All Mr. Conroy is trying to do is leave the option open, when we get to revenue, finance, and taxation, to consider the matter of central cash management. Without this kind of language, we can consider the matter all day; put it in revenue, finance, and taxation, and it still might not prevail. I think the request—that is, the request to leave our options open—is important. I'm not going to try today to give you the facts about how much money was involved in the Port of New Orleans and the other ports, how much they derive from the legislature, how much they need the finances of the whole state; I'm not going to try to get into that. The point I'm going to try to make, and ask you to support Mr. Conroy's amendment, is that it certainly leaves the option for good government—as bad as that phrase might be—to us. I think that when we get to revenue, finance, and taxation next week or whenever, you'll be amazed at some of the peculiarities in the accounting and budgeting and accountable processes in and about the Port of Orleans and other ports in this state, and that is the issue here. If you close the door now, what you're closing the door to, in this constitution, is a chance for central cash management for one of the biggest of our state agencies. That's why I support this amendment, and that's why I urge you to do so. It's not designed to get at the Port of New Orleans; it's not designed to close the port; it's not designed to stop the importance of the port to our state. It is designed to go on record that the Port of Orleans is part of the State of Louisiana, and is not the bailiwick of a few people on a board in Orleans, or the citizens of Orleans. I urge you to support this amendment. I think it leaves the options open to us. That is the very minimum I would expect of an organization like this: that we leave our options open until we see what we do in revenue, finance, and taxation. I'll now yield to questions.

Questions

Mr. Lanier Mr. Roemer, we're talking on this phrase "subject to and not inconsistent with" on all of these different sections. Suppose two of them became inconsistent with each other; how would we resolve that?

Mr. Roemer Well, I don't know. I think Mr. Conroy is asking you to do that.

Was that a rhetorical question? I'm so

Mr. Anzalone Buddy, you have spoken a great deal about the cash management and this is the amendment that is going to cure that. Don't you think that if that is your only concern that it can be taken care of in revenue and taxation?

Mr. Roemer Well, I don't know. I think Mr. Conroy is asking you to do that.

Mr. Lanier Mr. Roemer, we're talking on this phrase "subject to and not inconsistent with" on all of these different sections. Suppose two of them became inconsistent with each other; how would we resolve that?

Mr. Roemer No, no, at least I'm not, I can tell you that. I'm not asking you to do that. I'm asking you to do that.

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Mr. Roemer Well, it says the same thing that we've done some six or seven times so far in this same proceeding. It leaves the option open.

Further Discussion

Mr. Avant Mr. Chairman, and fellow delegates, I get up here to speak in favor of Mr. Conroy's amendment, and I'll tell you why. In the first place, all day yesterday we listened to the Port of New Orleans, the Port of New Orleans, the Port of New Orleans, like that's the only port in the state and that's all we've been talking about. That's not so.

Mr. Chairman, and fellow delegates, I believe I'll stay over. I said get up here to speak in favor of Mr. Conroy's amendment, and I'll tell you why. I sat in here all yesterday afternoon and we listened to the Port of New Orleans, the Port of New Orleans, the Port of New Orleans, like that's all that this subject matter deals with. Well, that's not all it deals with. It deals with all of the deep-water ports in the state, of which the Greater Baton Rouge Port Commission happens to be one. So when we're dealing with this section, we're not just talking about the Port of New Orleans. You're talking about something that is very important to the people of the parish of East Baton Rouge. Now, the specific matter before us is whether or not we're going to put, in this section, language that we have inserted in a number of other sections of this constitution where we have ratified, and continued, and confirmed certain preexisting body. That is language which makes it clear that while those bodies are ratified and confirmed, and continued, they are continued insofar as they are... they are continued, but they will be subject to, and their powers shall be exercised in a manner not inconsistent with the provisions of this constitution. Now, let me tell you why I got up here...the specific reason I got up here. Every one of these port commissions has got the right to expropriate property. Every single one of them has got the right to expropriate property. Now, in certain sections, when we have continued preexisting bodies, we haven't used this language "subject to and not inconsistent with," perhaps, or maybe we have, but I know we've used it in some places. Well, if we don't use it here, and we don't put it here, in view of what we have done in other sections, then we leave it wide open for the courts to hold that the expropriation powers of these port authorities will be governed by the Constitution of 1921, and the statutes under which they operated prior to the adoption of this new constitution, and will just completely nullify what we spent the better part of, I think, two days here arguing about, and that is the expropriation provision in the Bill of Rights. Now that's just one thing that we're talking about. Of course, they've already alluded to this other thing about revenue and finance and taxation, of which I know very little, but I do know this: that there are gasoline taxes that are dedicated to the Port of New Orleans, and there are gasoline taxes that are dedicated to the Port of Lake Charles. Now, I understand that we are going to be asked to do away with all dedicated taxes. I don't know what we're going to do on that, but if that's what we decide to do, we certainly ought to nail it down that we're really doing it and that the port is not some special creature that's going to be separate and apart from everybody else. We're going to be under. So for the sake of uniformity and the sake of making sure that what we have done before, and may do in the future, will not be undone, I think it is absolutely necessary for us to adopt the Conroy amendment, particularly in view of the fact that we have inserted that language in other sections; so I ask that you support and adopt this amendment.

Questions

Mr. O'Neill Jack, this problem has come up time and time again when they've tried to ratify existing material. Don't you think that we've done this and

we put this phrase in before? Don't you think it's just consistent to put it here just to make sure that these things will conform from here on out?

Mr. Avant Well, I feel even stronger than that, Mr. O'Neill. I feel that it's mandatory that we put it here, since we have done it in other places, and if we don't do it here, we're saying "Well, it doesn't have to be subject to and not inconsistent with the provisions of this constitution."

Mr. Lanier Mr. Avant, with all of these "subject to and not inconsistent with" that we've been talking on, suppose two of these provisions that have that on it become inconsistent with each other. What would we do?

Mr. Avant Mr. Lanier, that's a problem we get in--not with the idea of saying "subject to this constitution"--it's an idea that you get into by constitutionalizing--it's a problem you get into by constitutionalizing a whole bunch of prior statutes, which is what you're asking us to do. You're asking us to put into this constitution a "pig in a poke," as somebody said, and that is all of the statutes that have been passed since the day one concerning these particular little special groups and entities and going to put them in this constitution. We don't know what we're doing, and you don't know what we're doing because we couldn't possibly know what all those statutes provide. Yet, that's exactly what we're being asked to do, just put them in this constitution, make them constitutional material, and if they're inconsistent, it's going to be inconsistent because they've been inconsistent since the day one, not because we made them inconsistent.

Further Discussion

Mr. Denberry I speak in opposition to this amendment, and I particularly speak to the point that Mr. Roemer made, namely, will we should keep our options open. I agree that we should keep our options open. I think we close our options when we adopt this amendment at this time. I had hoped to be able to ask Mr. Roemer a question, but unfortunately time ran out. It is equally as good to provide in the finance section with regard to cash management, if we choose to do that at that time. The language "notwithstanding the provisions of Section 50," which is the port provision, nevertheless such and such shall be the case...it seems to me that we leave our options much wider open by not freezing it in at this point and by letting it go until we discuss the financial section. For that reason I urge you to reject the amendment at this time.

Chairman Henry in the Chair

Questions

Mrs. Warren Mr. Denberry, Mr. Avant made a statement when he was up there, and I didn't want to ask Mr. Avant this question. I wanted to ask somebody else that was in opposition to his amendment. I just want to know, you know, for my information. Mr. Avant said if we didn't put Mr. Conroy's amendment in, that with the situation that we're in now--giving industry and ports the right for expropriation of property--that they would be in the same situation as they were in the 1921 Constitution. They would be governed by the 1921 Constitution. This is what I gathered. Is that true?

Mr. Denberry I don't agree with Mr. Avant on that point. It seems to me that we now...if this constitution is adopted, we will have a constitution which provides for methods of expropriation and that's the law.

Mrs. Warren I'm wondering if Mr. Hargrave is in here, one of our...this is very important to me. I'm wondering if one of our staff, Mr. Hargrave or somebody, can interpret this, to tell me if this is

no halfway line. I want to know if it is or if it's most probably that it would be.

Mr. Denberry: I don't know whether Mr. Hargrave is here. I can't answer that question. I can only give you my opinion that if this constitution is adopted, the provisions regarding expropriation of property that are contained in the 1974 Constitution will prevail, despite what the 1921 Constitution or any statutes may have said previously.

Mrs. Warren Well, you see I don't understand "not being inconsistent." That seems to me that somebody is very upset about the constitution...things not being inconsistent with it. I'm just a layman, and I'm kind of green, and I want to know because to me that sounds like it should be. But with all the racket that I've heard seems like it's something that shouldn't be, or somebody's got some good reasons for it not being.

Mr. Denberry: Well, Mrs. Warren, the only answer I can give to that question is the one that Mr. Casey gave when he spoke up here. That was that the amendment that is presently before the convention... that would add to the existing amendment... provides that the legislature may diminish or reduce the powers that any court presently has by two-thirds vote. If we put this provision in, it is my considered opinion that if other provisions of the constitution present a majority vote, that that will wipe out the two-thirds provision in this section. That's why I'm opposed to it.

Mrs. Warren Thank you.

Further Discussion

Mr. Jenkins: Mr. Chairman, delegates, when I look at a section like this Part IV on ports and read it, I ask myself what does it accomplish? What does it do? What does it add to this constitution that we're writing? If we said nothing about ports, what would the legal situation be after the adoption of this constitution? Would all our ports be abolished? Would they continue to exist? What would be the situation? Surely if we said nothing in here about ports, all our ports would continue to exist, would have all their current powers and functions, except as those powers and functions and authorities might be inconsistent with this 1974 Constitution. So, what is the purpose of this Section? The only purpose that I can see for this section is to give to the ports powers over certain functions, certain authority which will not be subject to the other provisions of this constitution. Read what it says. "All deep-water port commissions and districts as they are now organized and constituted, including their powers and functions, structure and organization and jurisdiction, all rates and tolls and contracts they now contain exist except that the legislature may change them by two-thirds vote. In other words all the statutes, all the constitutional authority in previous years, is incorporated by reference herein and is valid. That's the same trap the drafters of the 1921 Constitution fell into. They were incorporating by reference pages and pages of old laws, even court decisions. Is that what we're going to do here? Without the Conroy amendment saying that this section is "subject to and shall not be held to be inconsistent with other provisions of this constitution," we will be doing just that. That's the only legal effect this section can have. Our ports are going to continue without it, except as inconsistent with this constitution. What are the powers and functions of our ports? One thing is clear, they have the power to expropriate authority, to expropriate authority which is not constitutionally theirs. They have all the powers and functions that they have all their previous powers and functions. So, what's the purpose of this amendment? We're saying that their powers and functions and those are superior to other provisions herein. Now, that doesn't make sense. If we're

going to have this section, and it's probably doubtful we should in the first place, but we certainly have to make it subject to this constitution. Now, I'm not making any suggestion as to what has been put on that. That's not the issue here. The question is whether or not the powers and functions of our port commissions are going to be consistent with this constitution or not. Cash management is just one small part of it. Expropriation powers are just one small part of it. The other provisions of this constitution cannot be inferior to any statutes or previous constitutional authority which may be adopted in this state. So, I urge you. Let a new New York Convention be held. Let's let a new constitution be written, and functions here are not to be held inconsistent with what we've already done or what we might do in other sections of this constitution.

Questions

Mr. J. Jackson Woody, the point has been raised...the question has been raised to me that this allow..the amendment as exists, the section as exists, allows our port authority to, let's say, establish warehouses that, let's say, not in location of the waterfront or something like that.

Mr. Jenkins Johnny, you see, it is making a general reference to all the powers and functions that ports might have. Frankly, I can't tell you all the powers and functions of the port commissions because they would be found in countless constitutions and laws of the various countries. The provisions are hereby ratifying. That is, they are ratifying the section as written. We can't be expected here to ratify things which we don't have before us. We don't know what they say. We don't know whether they are consistent with other provisions of this constitution.

Mr. Weiss: Delegate Jenkins, are you familiar with the aspect of the financial... of the Committee on Finance as to what they will propose? In other words, it seems to me that we are preparing to sign a blank check and to speak, or the people will have to be allowing this money or this section to go into our constitution without knowing what the Finance Committee has in mind. For example, all funds that come to the port may ultimately go to the state treasury, and if essential deposits are made, the port will have to go to the state treasury to obtain funds from the state treasury?

Mr. Jenkins Well, Doctor, the thing we're going to have to do when we get to that substantive question is analyze it and consider whether or not ports should be under cash management. But that should be decided then.

Further Discussion

"Mr. Tobias -- Chairman, fellow delegates, I regret that I have to rise again today to attack another amendment. I firmly believe that this is a very bad amendment. I'll try to limit my remark to ninety seconds in line with what the Chairman has commented yesterday. We adopt this amendment, which will we have in effect? It will be very similar to having...you can almost analogize to the Viet Nam war...where it's trying to be controlled in Washington and fighting it over in Viet Nam. It doesn't work too well that way. A business has to run. It has to have control of its own finances. It's essential for the operation--its own operation. The Government has no right to take over the business of the private enterprise."

"I think that the provisions of the Revenue, Finance and Commerce Bill are all good. But I don't want to read them together. It is essential, absolutely essential, that we get the bill passed as soon as possible. New Orleans, through which passes \$1,000,000,000 worth of goods a year, we've got to keep that money in the local bank."

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[General Amendment proposed: 6100.]

Amendment

Mr. Poynter Amendments sent up as follows: Amendments by Nunez, Tapper and Gauthier.

Amendment No. 1. On page 26, line 12, strike out Floor Amendment No. 1 proposed by Delegates Ullo and Conroy and adopted on yesterday, and in Floor Amendment No. 1 proposed by Delegate Denberry, et al., and adopted by the Convention on yesterday. Below the language added by said amendment add the following:

"(C) The legislature shall make provisions with respect to the membership of the herein provided commissions. Once the membership is established it may be changed only upon a two-thirds vote of the elected members of each House of the Legislature."

Explanation

Mr. Nunez Mr. Chairman and fellow delegates, this amendment will do essentially what we had spoken about yesterday, that is to provide for the membership in our deep-water port commissions, which by the way we are not providing for now, and I can't stress that enough. We are not making provisions for the membership of the deep-water ports. Now, what this amendment does is very simply it provides for the legislature to establish provisions, not to appoint, and let me assure you that's not the intentions of having the legislature appoint these members. It provides the provisions, just like they are provided for now in various statutes... provides the method by which they shall be appointed. Let me assure you, these port people are very influential and very effective in working in the legislature. Once the membership has been established in the law and once the members have been appointed, it would take a two-thirds vote... a two-thirds vote of the legislature to change it. Now, I think this is as equitable and fair and good a compromise that I can possibly reach because it does similar to what the present provision does-- regarding the territorial limits and the jurisdiction etc., by two-thirds. But this one touches on the memberships. It only touches on the memberships, and it cannot be changed. A lot of you have told me, and I realize rightfully so, that the legislature could change it each year if it saw fit by simply majority--by a simple majority of the votes. If the legislature changed, they could change the membership. So, we decided to go with two-thirds which, by the way, is essentially what Section A says, or Paragraph A or B. The jurisdiction, the territorial limits, the powers, and functions, and etc., by two-thirds can be changed. So, we would establish a procedure, a provision for selecting the members, and I am sure it will be similar to what you have known the port people in this state, and you know the legislators that are representatives of those various districts. They practically comprise a majority of the members of the House and the Senate. I, as an individual, or myself and several others could not do nothing that they don't want to do. I think this is the way to do it. It's that simple. I think that this is the way we should do it. I see nothing wrong with doing it in this manner, and certainly locking in the provision that they cannot change it, except by two-thirds at later years, is exactly what they have now. Please tell me what's wrong with that, Mr. Duval. Please tell me...evidently, there's no objection. So, I move final passage.

Questions

Mr. Lennox Sammy, how does this snake differ from the one we killed yesterday, other than in size?

Mr. Nunez It's no size. Mr. Lennox, the one we killed yesterday the legislature could come back every year if they so desired, or every four years when you change the legislature, and you have a habit of changing us quite frequently, by the way.

When you change the legislature, they could come back and change the port. So, we inserted the same provision you now have--the same identical provision that you now have in Section A or B. It takes two-thirds of the legislature to do that, and by the way, it can do it now by two-thirds. So, saw nothing wrong with that but to generally establish the membership the first year and to provide for the membership by a simple majority.

Mr. Stinson Mr. Nunez, isn't it a typographical error? Shouldn't it have two-thirds to do that, if it's going to take two-thirds to change? Wasn't that a typographical error?

Mr. Nunez No, sir. That wasn't a typographical error.

Mr. Stinson You mean it intended a majority can establish it, but it takes two-thirds to change it?

Mr. Nunez That's exactly...you're doing almost the same thing now with your provision by taking it out of the constitution and said it can be changed. You're saying a lot more than membership by the way. You're saying territorial jurisdiction. I just thought a lot of people had come to us yesterday and said, and I think they basically were telling us that they would vote for it, if we would put this sort of provision in. A lot of people said they did not care to see it changed every time the legislature met or every time there was a change in the legislature. I think the two-thirds provision would give them what they have been seeking. That's the solidarity or the consolidation of the board.

Mr. Stinson But those that told you that, didn't they say that if it took a two-thirds vote to do anything that they'd be for it, but not to freeze it in and take two-thirds to take it out.

Mr. Nunez No, sir. You're the first one I heard say that. Those who told me said if I would do it this way that they would accept it, that if they found it to be acceptable because it tracks....

Mr. Stinson In other words, this is just like locking the barn door and throwing the key away. Isn't it?

Mr. Nunez Well, I thought that's what the ports wanted to do. Lock the barn door to what they have now, and throw the key away. It just does exactly what they want to do but the initial step shall be by an act of the legislature. To set up the provisions, Mr. Stinson, to set up the method by which they shall be appointed, and then you can't change that except by two-thirds vote of the legislature. I see nothing at all that should....

Mr. Fulco Sammy, what's the term of office for these members? For how long do they serve?

Mr. Nunez They presently serve a term as provided by the constitution. I think it's five years, but that would be provided by the legislature, Mr. Fulco. If they want them to serve ten years, five years, twenty years, it wouldn't make no difference to me. If the legislature provided so, that's the way it would be. They're presently serving, to my understanding, I think...they're different. I'm not sure how....I think the dock board in New Orleans serves for five years.

Mr. Fulco Well, that's what I wanted to know. I didn't know whether it was staggered term or four years--serve at the pleasure of the governor or what.

Mr. Nunez Well, they are staggered. I don't know if you were here yesterday when we ran down how they are appointed. The method of appointment of that particular body is an archaic method, and that has been the problem. If you want a change, and you have to change, you can't change it except by a

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cause we have not been able to resolve our problems till it is a legislative job and we should let the legislature take the time, the time it's going to take to study this problem in ironing it out and work out the details. After they have done so, come up with a composition of a commission and then lock it in. I don't feel that is being unreasonable. I feel that it's being fair and just to all of the citizens of this state. I beg of you to consider it. Do you really know how many members, or where they come from, are now presently serving on the Port Commission? Do you know its makeup? Do you know what it will be? Are you satisfied with it? If so, vote against the amendment. But if you have any questions, if you're in doubt, then I say to you it is a legislative problem and let the legislature decide upon the membership, and then to take it out of the political arena, lock it in by two-thirds vote thereafter. Please consider it before you cast your vote. Thank you.

Questions

Mr. Roy Mr. Gauthier, does Orleans Parish have seven Senators?

Mr. Gauthier I believe you're correct, Mr. Roy.

Mr. Roy Then, if this doesn't pass, it would take all Orleans Parish would have to do is to pick up another six Senators and prevent any type of meaningful application of law to this area that has been, and we've already constitutionalize the encrusted people in there, and they'll never be able to be changed. Is that right?

Mr. Gauthier Chris, for once I think you hit the nail right on the head.

Mr. Anzalone Mr. Gauthier, do I understand from the meaning of your talk that what you are looking for is a little bit of flexibility in these appointments?

Mr. Gauthier That's correct.

Mr. Anzalone But yet, what you're really saying is that after we get it the way we want it then we want it to become inflexible again which is the same problem that we've got now.

Mr. Gauthier You're right, Joe. You're very right. After the way we want it, all of the people, not a certain few, but all of the people. "We" was a good preface to it, Joe.

Mr. Anzalone One more little quick question. How many people decided who was going to be on this thing in the first place?

Mr. Gauthier You'd have to go back to the history books, Joe. I couldn't tell you that, and I don't believe anybody in the room could tell you that.

Mr. Casey Mr. Gauthier, I'll never understand, and I'm asking you a question, how all the people are making this determination when it's a simple majority of the legislature as distinguished from a two-thirds vote of the legislature, and is not Mr. Anzalone correct that a simple majority of the legislators may initially, under this amendment, be in the future after that, it can only be changed by a two-thirds vote. Is that not correct?

Mr. Gauthier Tom, I'm even amazed that you have asked such a question. You profess to have so much faith in the legislature and in a democracy which, as you know, majority rules. It amazes me that you even ask this question.

Mr. Casey Well, couldn't the legislature under this amendment indicate or state or require, under this process now, that the governor would make all the appointments. Couldn't the legislature do that?

Mr. Gauthier Tom, in the same vein that you have spoken many times...

Mr. Casey You didn't answer my question.

Mr. Gauthier Are you going to let me answer...

[From a question related.]

Closing

Mr. Nunez Mr. Chairman and fellow delegates, I think if ever we have reached a reasonable compromise in this convention, I think we have reached one now. I think it's not only reasonable, but it is logical, it's sensible, and it's the way the problem should be handled. I think Mr. Roy, or Mr. Gauthier, whoever brought it out, brought out a very good fact. The ports in this state that are represented in the legislature have almost a majority, or fourteen members of the Senate—fourteen members of the Senate. That's two-thirds of that Senate, pretty close. You need only two more members and you've got two-thirds. I just can't see how this would jeopardize the operation of any port. I just can't see how this would jeopardize or politically influence any port. Let me tell you. We've had a lot of port legislation in the past ten years since I've been up here, and I don't believe I've ever voted against any one of them, including the loan we make to Baton Rouge annually. The loan we make to Baton Rouge annually to pay off a deficit they have. I will continue to do that, including the bond issue we passed in '70 for thirty million dollars to support, to help the Port of New Orleans, including the gasoline money that they get, including the other provisions that they ask for in the constitutional amendment that they can bond their revenue money. Nobody, nobody especially the speaker up here, is out to hurt our deep-water ports. I know the value of our ports. I live right next to one, and I've got, I'd say, a number of their...probably of their commissioners' lives down in my parish. They live in the surrounding areas. A tremendous amount of workers live down there, a tremendous amount of dock workers. It's a part of the economy of the entire area. I am not going to do anything to hurt that port. I think it's a matter of record. I think it's a matter of record that the legislature will not do. The legislature does not annually pretty good to these ports in the state—pretty good. If you look at the past bond issue we've passed, you'll see what I'm talking about. All I'm doing here, gentlemen and ladies of the Convention, is setting up a method whereby you can have reasonable appointments by the elected representatives of the people of this state, and if the state is supporting these ports, where else should they come from—certainly not from the people that's appointing them now, certainly not because you have no provision now. All you have is something here that says "one shall come from each parish represented, or each parish that it has jurisdiction in." You don't say how; you don't say if that parish doesn't want to be represented; you don't say a lot of things. So, I'm asking you in all sincerity, and I'm telling you that this is a vital thing to a lot of people in this state. You're not giving me anything. All you're doing is telling the legislature you provide. You, the elected legislators of this state, who are doing nothing to find the tax monies to run the ports, you provide for a method of making those appointments. Once you provide, gentlemen and ladies of the legislature, you cannot change it except by two-thirds. Isn't that giving them security? It's the same security they're asking here. It's the same security when you took them out the constitution and placed them in this provision in the constitution that they can be changed by two-thirds. I really think we're doing the right thing for the State of Louisiana. I think it's in line with what we've done in this constitution. I would see no reason, no reason at all, unless someone wants to lock into the constitution, or into the statutes, an archaic provision for appointing board members to ports.

your serious consideration. It's a very serious amendment. It does what I think, and what I think you think ought to be done. What you think ought to be done and what ought to be done in this state when it comes to our ports. It provides a method for doing something that we won't have any trouble with in the future. If we do have to change, if we do take in a parish or two and extend the jurisdiction of a port, like it's very likely we might have to, it's been said about the great growth from Baton Rouge down to New Orleans, and if you ride along that river road, there is a tremendous amount of growth. It's been said about the Superport activity; we don't know where it's going. If it takes in two or three parishes, you have the flexibility to change, a two-thirds vote of the legislature. If you think it's easy to get two-thirds votes of the legislature to agree on anything, I'm telling you it isn't. It's difficult. Please, please go along with this amendment.

Mr. Poynter. Amendments sent up by Delegate Jenkins as follows:--apparently, a lot of these were lost; they've been repassed out, I believe--Amendment No. 1. On page 26, line 11, in Floor Amendment No. 1 proposed by Delegate Denberry, and adopted by the Convention, Louisiana Constitution, Article 8 of that amendment, after the words "the legislature" and before the word "may" insert the following: "may consolidate any such commission or district or".

Explanation

Mr. Jenkins. Mr. Chairman, delegates, if you look at Section (A) of the section, as we have it, it says that "the legislature may diminish, reduce, or withdraw from any such commission or district, any of its powers and functions, and may affect the structure, and organization, distribution, and redistribution of powers and functions of any such commission." This could amount, in an extreme case, to abolition of a commission, or district, and that might be desirable at some time in the future. One quirk we have in the law, if we adopt this section, is in the case of the superport, because the superport has been created by statute not by constitution, and yet, we would, in effect, be ratifying and endorsing everything in that bill by virtue of this section. Now, if we could not abolish the superport, at such a time, it would be a strange situation because the legislature could not abolish what it has created. This may, indeed, be a possibility in the future because of the L.O.O.P group, the private group, which is contemplating building a superport, which might save the taxpayers of this state three or four hundred million dollars. Certainly, if a private concern were to build such a port, the state of Louisiana would not want to duplicate it, and it might be necessary to abolish such a statutorily created authority. Also, in some future time, it might be desirable to consolidate some of the ports as they've done in other states. The two-thirds protection in Section (A), I think, will prevent any sort of frivolous consolidations or abolitions, and will protect each part of the state. I talked to the people at the Orleans Port, and they have no objection to this because they think the two-thirds vote is sufficient protection; I've

Question

Amendment

Mr. Poynter. Mr. Chairman, the Denberry Amendments are up here. Basically, I can tell you what--they are going to have to be altered. You've got the lengthy Denberry amendments; he wishes to delete that Paragraph (C) and leave the Paragraph (C) as just adopted. He also wishes to leave the Jenkins amendment as just adopted. So, with your permission, Mr. Denberry--you might want to be explaining this--I think that perhaps a better way, would be for me to cut and clip, and just have one consolidated amendment that would include the (C) as just adopted, and include the Jenkins language just adopted. It'll take me a few minutes to work--yes, sir, but--Now, I'm following what you're indicating to me, aren't I, Mr. Denberry--leaving the (C) as just adopted and the Jenkins amendment language in, and otherwise, it'd be the same program.

Explanation

Mr. Denberry. Correct.

Mr. Chairman, and delegates, the purpose of this amendment is to straighten out what, conceivably, may have been an error in the amendment that was adopted yesterday. You will notice that I have reversed Paragraphs (A) and (B). It was called to my attention by Mr. Pugh and others yesterday that, conceivably, the addition...or the grant of additional powers and functions, and the creation of a new port commission or port, harbor, and terminal district under the amendment as adopted yesterday, might require a two-thirds vote of the legislature. That was not the intention; you will recall that I explained that yesterday. Therefore, in order to avoid any possible conflict, I have rewritten the amendment, so as to put (A) where (B) was yesterday, and (B) where (A) was yesterday. It is to make it crystal clear that the legislature may grant additional powers and functions and may create new port commissions, etc., by a majority vote, but that the other changes would have to be by two-thirds vote. It is really a technical amendment, and I did not want to confuse the convention by indicating that we were going over this battle on (C) again, or any of that sort of thing. So, with your consent and with the changes as made by Mr. Poynter, I request that you adopt the amendment.

Mr. Henry. We are going to stand at ease for a minute, so we can get this thing out and so folks can get a look at it, although there's no question--

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and terminal districts;

(B) The legislature--this is the insert--"may consolidate or abolish any such commission or district or may diminish, reduce, or withdraw from any such commission or district any of its powers and functions and may affect the structure and organization, distribution, and redistribution of the powers and functions of any such commission or district, including additions or reductions of its territorial jurisdiction, only by act passed by a favorable vote of at least two-thirds of the elected membership of each house;

(C) The legislature shall make provisions with respect to the membership of the herein provided commissions. Once the membership is established it may be changed only upon a two-thirds vote of the elected members of each house of the legislature."

Explanation

Mr. Dennerly Mr. Chairman, I'll be pleased to answer any questions. I had explained it before Mr. Poynter revised the language.

Questions

Mr. Newton Moise, did you...you left the language of the Jenkins amendment in. Is that right? I didn't catch it.

Mr. Dennerly Yes.

Mr. Newton Moise, I wish you'd look at your language in Section (C). I think maybe it might be better to say "the legislature make provision for determining the membership, or something like that. I think the language is a little vague. Maybe Style and Drafting could do something about it....

Mr. Dennerly Well, Mr. Newton, that's the language that the convention just adopted. That's Senator Nunez and Representative Tapper's amendment. I didn't want to bring that question up again. It'd been brought up enough.

Mr. Newton I mean it might be just locking people in there, is what I'm talking about...persons, instead of a method of...

Mr. Tapper Mr. Dennerly, I believe I understood you to say that your amendment in no way affected the amendment that was just passed, and I think you're referring to Section (C) which says that "the legislature shall make provisions with respect to the membership of the herein provided commissions." However, the wording of our amendment was that the membership...or the provisions shall be by majority vote of the legislature. I'm wondering, since your second sentence in Paragraph (C) refers to two-thirds, if you would not be implying by Section (C) of your amendment that it would take two-thirds to make provisions for the makeup of the...

Mr. Dennerly Mr. Tapper, this is a zero of your amendment. I don't think any change was made, unless Mr. Poynter made a change.

Mr. Poynter That's just a Xerox, Mr. Tapper, of your and Nunez's and Mr. Gauthier's amendment.

Mr. Cayal Mr. Dennerly, this is merely a technical amendment, is it not, reversing the paragraphs to make your intent clear? Isn't that what it is?

Mr. Dennerly Yes, it merely reverses (A) and (B).

Mr. Champagne I have the same question that Mr. Newton had, and I know we adopted it, but I don't know if this doesn't say, once you say "these five people are going to be in there," you have to have a two-thirds vote to change it, to get them out, or to even change those names. I know.

Mr. Dennerly Mr. Champagne, I can't answer that question because I don't draft the amendment.

[Insert as written in original. Final vote ordered. Amendment adopted. 94-10. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Chatelain]. On page 26, line 12, in Floor Amendment No. 1, proposed by Delegate Dennerly, and adopted by the convention on today--amendment just adopted--on line 22, of said amendment--and incidentally, that's down in (C)--after the words "membership of the" delete the remainder of the line and at the beginning of line 23, delete "vided commissions," and insert in lieu thereof the following: "Board of Commissioners of the Port of New Orleans."

It would make the first sentence read as follows...of (C), if you've got that Dennerly amendment, just adopted: "The legislature shall make provisions with respect to the membership of the herein provided commissions, once the membership...I don't do that right, either..."The legislature shall make provisions with respect to the membership of the Board of Commissioners of the Port of New Orleans." Then pick up "Once the membership is established."

Explanation

Mr. Chatelain Mr. Chairman and fellow delegates, I wish that you'd give me your attention just for a few minutes. I'm not going to fight this real hard, but I think it should be put before the people of the State of Louisiana, that this fight is...in the Port of Orleans, not the entire State of Louisiana. For eight months I sat on this committee, and we had more meetings relative to this Port of Orleans than all others put together. I feel that the in-fighting in the three parishes around the Port of Orleans has caused this problem. I'm not faulting Jefferson Parish, St. Bernard Parish, or Orleans Parish, but the problem has been going on for eight months in this Constitutional Convention. I feel...my amendment will put the problem exactly where it belongs in that area. Let's limit the Board of Commissioners to the Port of Orleans in Section (C) of the amendment just adopted. I feel that's where it belongs; that's where the problem is, and let's put it squarely, squarely where it belongs. Let's not involve the Port of Lake Charles, the Port of Baton Rouge, the South Louisiana Ports, and other ports in this state. Let's let the fight be in the Port of Orleans area only. I urge your support of this amendment.

Questions

Mr. Rayburn Mr. Chatelain, would you briefly tell me what this amendment does?

Mr. Chatelain Yes. It limits the possibility...of the...one-half of the legislature to debate the Port of Orleans only, not the rest of the ports in the State of Louisiana.

Mr. Rayburn would you explain the "one-half of the legislature?"

Mr. Chatelain Yes.

Mr. Rayburn Well, what are you talking about?

Mr. Chatelain Well, I'm talking about one-half of the legislature now, in Section (C), can change the commissions and the boards of all the ports in this state.

Mr. Rayburn Do you have any ports in your area?

Mr. Chatelain Yes, sir, Port of Lake Charles.

Mr. Rayburn Well, what are you doing to them? No, Lake Charles is about as far from you, or further, than New Orleans is from me. I mean, what effect will this have under the present language that we just adopted? I can't understand the divi-

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tured, we did put in our committee report the proposal that the legislature, for a period of ten years, could change the makeup or the membership of the Dock Board of New Orleans. All that this Nunez amendment does is to make that apply to all of the ports throughout the state. I think it's time, maybe, we begin to think a little bit about the politics of all of this, and I realize that among some people in the Port of New Orleans this is going to be a very... the people... some of the people are not going to like it. But, I don't believe that we should be so politically unwise as to pick on the Ports of Baton Rouge, of South Louisiana, of Lake Charles, and I'm saying to you that if this amendment is adopted, at least, it will bring down the hostility of those who would be supporting the Port of New Orleans. But, why should we go out now and pick on these other ports where they have no problems? I say to you, I think that you're making a big mistake, if you do that. So, since the problem is localized, I suggest to you that, even though it is not the best constitutional method of approaching a problem, that we must pass a constitution, and we must need any more enemies than we already have to the passage of this constitution, and therefore, I suggest to you that you limit the effect of the Nunez amendment to the Port of New Orleans, instead of making it apply to all the other deep-water ports.

Questions

Mr. Weiss Delegate Perez, would you say then, that the Port of New Orleans is quite unique and different? Of course, it has a different volume and load, and the commissions and the board that constitute it is entirely different than the rest of the ports of the state, and that we'd just as well call a spade a spade and label it for what it is, and let the constitutional article constitutionalize it, rather than to create a large commotion which is apparently occurring?

Mr. Perez That's correct. You see one of the problems involved in that, the Port of New Orleans has been in the constitution; the method of appointment of its membership has been in the constitution for these many years, and, as a result, it was virtually impossible to change that... the makeup of the membership, and it was because of that fact that all parties involved who testified before the committee recognized that there was an inequity with regard to the Port of New Orleans, that the committee put in the provision with regard to a majority being able to one time change the membership of the Port of New Orleans. But, I don't believe it's wise to subject all of these other deep-water ports to that same situation.

Mr. Weiss In how many previous constitution has the Port of New Orleans been constitutionalized?

Mr. Perez Well, the Port of New Orleans dates back into many of the earlier constitutions. I couldn't tell you how many.

Mr. Weiss Many previous constitution.

Mr. Perez But, some of the present provisions relate back to earlier provisions... provisions of earlier constitutions.

Further Discussion

Mr. Reeves I rise to oppose this particular amendment. It's not the reason that I favor the Port of Orleans, but I do favor the great State of Louisiana, and I favor the entire state. What we're writing is a constitution for the future, not a constitution of the past, and I don't know if you realize what you did or not. But, I was chairman of the Subcommittee on Ports and Transportation Districts; I know what you did. I hope that you will listen a moment and find out what you did do. If you would just be seated a moment and listen and find out what you've done for the past two days.

First of all, beginning of Section 50, you said "All deep-water port commissions, and all deep-water port, harbor, and terminal districts... as they are now organized and constituted, including their powers and functions, structure and organization, and territorial jurisdiction, are ratified and confirmed, and shall continue to exist, except that, "and go on down. I don't know if you know what that means, but that means that the Port of Orleans, the Port of Baton Rouge, the Port of Lake Charles, the Concordia Parish Port Commission, and the South Louisiana Port Commission are all constitutionalized. Now, then, for one second I would like to tell you what the Lake Charles Port Commission has in it in reference to its members. We find that that first—now, this is reading from the Constitution of 1921 which you just ratified, in case you didn't know it—we find that the "first vacancy on the board shall be filled by appointment by the governor, with the advice and the consent of the Senate, from a list of three nominees from the Rice Growers' Association." Presume that fifteen, or twenty, or thirty years from now, the Rice Growers' Association... which central office is located in Lake Charles, happened to move. Say it moved to Abbeville. You can't have anybody on the Port of Lake Charles... that's from anywhere else; it's in the constitution; you just wrote it in. What I'm saying to you is, if you pass this amendment, that you are simply making it only necessary for the Port of New Orleans to be able to be changed. I don't know what we are going to be needing to be changed in the Port of Lake Charles, or the Port of ... of the South Louisiana Port Commission in the future years, but if we continue progressing, as I hope we will in this state, it may be necessary that we change these particular shores. The way we're going to set up now, you can change them, but if you put it in there that just you can change the Port of Orleans, you can't change anybody else. Sit down and realize what you've done. It is unbelievable what you really have done. You've got in here, on down in the Lake Charles Port Commission, that, not only the rice growers are on the Port of Lake Charles, but you've got the Lake Charles Maritime Commission. Presume that something happened to it, and some of you say, well, nothing's ever going to happen to it, but no one would have thought that there would have... ended a cotton exchange in Orleans Parish, but it did. That was written in 1921. The cotton exchange does not exist anymore. You can forget it, but yet, it's in the 1921 Constitution, and you exist under it, and this is what's wrong. We've got to realize that we're writing a constitution for the future, not one for the past. This is not an Orleans provision; this is a State of Louisiana provision, and I would hope that you would vote no on this amendment, not for the city of New Orleans, for the city of New Orleans does not own the port; the great State of Louisiana does. We can be a great state; we can continue to be a great state, if we all stay together, but let's be together, and not single out the city of New Orleans or the Port of Orleans as a certain problem. Let's take care of everybody. I'll yield to questions.

Questions

Mr. Bergeron Terry, I'm in agreement with what you've said. Every time people get up to the microphone many of them have said, "We're not talking about the Port of Orleans, which pertains only to New Orleans; we're talking about a port which pertains to the State of Louisiana." Do you agree with me on that?

Mr. Reeves Yes, sir.

Mr. Bergeron In the past articles that we've completed, we've only mentioned New Orleans, some time. Do you realize that?

Mr. Reeves Yes, sir.

Mr. Bergeron It's been our job, and it seems like

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the consensus of most of the delegates here, to bring New Orleans back into the rest of the state. I just cannot figure out how we're going to specifically direct this section that we're writing here only to New Orleans Parish...only to Orleans Parish. Do you agree with me on that?

Mr. Leveaux Yes, sir. I agree that we need to either move the city of New Orleans and Orleans Parish into the state, or take them out.

Further Discussion

Mr. Ullo Mr. Chairman, fellow delegates of this convention, I rise in favor of this amendment. During all our hearings on this Subcommittee on Governmental Structure, I have heard that all municipalities throughout the state were quite happy with their membership, their structure, organization, so I can't see now why we should open any can of worms, as far as these other port authorities are concerned. I feel most of our sessions were dedicated to the Port of New Orleans, where, it's certainly very apparent, St. Bernard, Jefferson were very dissatisfied with the present situation, and we were married to something we had nothing...wanted no part of. I think, like Mr. Perez, this would be politically unwise to go forward and not make this exception as far as the Port of New Orleans. I ask your favorable adoption of this amendment.

Questions

Mr. Weiss Delegate Ullo, some of the members of this committee have recently testified that they are opposed to the inclusion of New Orleans, specifically and separately. Yet, is this not the recommendation of the committee that I hold in my hand, that was presented to this body, that New Orleans and its Port and Board of Commissioners be considered separately. One, this Section (C) specifically says that "for a change in the method of selection and composition, the Board of Commissioners of the Port of New Orleans, and define its territorial jurisdiction." In other words, the committee report has requested that New Orleans and its port be separately classified. Is that correct?

Mr. Ullo Yes, sir, that is the recommendation.

Mr. Leveaux Yes, sir, that is the recommendation.

Mr. Ullo It was very close, but they...a group of people on our committee, seemed to be against it on everything.

Closing

Mr. Chatelain Mr. Chairman and fellow delegates, you know you throw these amendments in once in a while to kind of waken the convention, but let them know what they've done and give them a chance to look at themselves. I feel this amendment has done this. I think that the history will show...the records will show that at least we tried to focus this exactly where it belongs. Imagine in 1974 when this constitution is adopted by the people, immediately thereafter there's going to be a scramble who's going to run for the legislature, who is going to be running for governor, and it's possible that a group, a powerful group, could get together and restructure all the ports and commissions in Louisiana. Give it some serious thinking what we've done here today. I know that

this convention that anything that you are for...

debating here today is a problem involving the structure of the Board of the Port of Orleans and the problem lies in three parishes...the parish of Orleans, the parish of Jefferson and St. Bernard.

peared there and spent two long days trying to wrestle with that problem and after eight months and two days debate on this floor there has been no meeting of the minds and I doubt that in the next session there ever will be, and I agree with Dr. Ullo...you continue to have this can of worms open. Let's leave it like it was and go on about trying to adopt a constitution that the people of this state can live with. I urge your support of this amendment. Thank you.

Explanation

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, as you know, the job of the Local and Parochial Government Committee was to take about one-third of the constitution and try to condense it and to consolidate it into as brief a document as possible. In order to do that the committee felt that it was necessary to have certain definitions so that when we talk about certain areas of local government that we would not have to say including this one, that one, and so forth and so on. That would have been a common definition for many of the various agencies. For instance, if you would look at the definition, and is what we have used throughout this article and the article means nothing unless the first two definitions are adopted, the word "local governmental subdivision" means any parish or municipality, so that as we went along in the various articles, when we wanted to give authority just to parishes or municipalities we referred to local governmental subdivisions. When we wanted to give authority not only to parishes or municipalities but to things like sewerage districts and water districts and the many other agencies of the state, then we had a definition of political subdivision which means parishes, municipalities and any other unit of local government including special districts authorized by law to perform governmental functions. The word "municipality", of course was needed to be defined because of the various types of municipalities and to provide that it means all incorporated cities, towns and villages. "Governing authority" means a body which exercises the legislative functions of the political subdivisions. Then we got into the various problems on powers, functions, structure and organization which is in definitions 5, 6 and 7. We felt that we needed a definition on general law which we have. With regard to the definition on local or special law, even though I have not had a chance to get together with the committee, it has been my determination that we do not need that particular definition and I think that we could probably do without it. "General obligation bonds" needed to be defined because of the fact that in our finance section we refer to general obligation bonds and better we define it. As you know, in each case when we refer to general obligation bonds, we put in one broad general definition with regard to those type of bonds. Then, of course, we've

Amendment

Mr. Leveaux I am moving to amend the constitution...

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words, "school boards and".

Explanation

Mr. Burson Mr. Chairman, ladies and gentlemen, this simply affuatuates the approach that we have adopted here with regard to the definition of school boards as a political subdivision and it would add after... in the definition of political subdivision, it would make it read: "Political subdivision means parishes and municipalities and any other unit of local government including school boards and special districts authorized by law to perform governmental functions." You will note that as we have gone through the local government article we have excluded school boards from those articles where they did not belong, but this would take care of all of the many articles... sections in the local government article where they do belong and we had the choice of either following this approach or including school boards in each article where they belong and at the advice of many delegates here chose the approach of simply excluding school boards from the four or five sections which they did not belong as a political subdivision. When we return to the finance provisions you will find there, in many cases, for instance with regard to bond election laws and the time for contesting a bond election that all of these things in many, many cases pertain to school boards. This is one reason why we want to make it plain that they fit into this definition.

Questions

Mr. Munson Mr. Burson, then it is your feeling that political subdivisions does not define school boards. In other words, it is your belief that a school board is not a political subdivision?

Mr. Burson There are some cases that would indicate that this is possible. Some cases would include school boards as a political subdivision, but there are some cases, particularly dealing with the question of prescription running against school boards that indicate that they are not to be considered a political subdivision for that purpose and in order to avoid any possible mistake, I think it would be wise to go ahead and put them in, for that reason.

Mrs. Warren Mr. Burson, it is commonly known that school boards are not political and when you say "political subdivisions" does that mean they are going to be political?

Mr. Burson Well, Mrs. Warren, I guess that they are not political in some areas. They are in the one I come from, but in all seriousness the term political subdivision here is simply used in the context of subdivisions of the political entity of the state and not necessarily in the term of partisan political that I think you're thinking of here.

Further Discussion

Mr. Perez I see no objection to the adoption of the amendment. It's consistent with what we've discussed before, before the convention, with regard to the authority of school boards.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendments offered by Delegates Gravel, Nunez, Rayburn, Brown, Mire and others.

Amendment No. 1, on page 28 delete lines 6 through 16 both inclusive in their entirety... 6 through 16... and on page 28 delete lines 22 and 23 in their entirety.

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen

of the convention, it appeared to many of the delegates that these particular definitions, especially those seeking to define powers, functions, structure and organization are certainly not needed in any way in any constitution that we might adopt. I don't know of any serious objection to the deletion of these kind of definitions and I would urge that you go along with the recommendation of the coauthors and myself that the definitions be deleted. With respect to the definition of local or special law, it may be that some definitions should be provided at some time, but certainly not in this particular manner, which really doesn't define what a local or special law is, it just says what it is not. I believe that at some time later on there might be a necessity to give consideration to a definitions section for the entire constitution and, of course, the other definitions that we would approve of at this time, excluding the ones that hopefully will be left out as a consequence of the amendment here proposed, then could be relegated to that definitions section. So, I urge that we adopt this amendment which would delete the provision in the committee report, lines 6 through 16 page 28, and line 22 and 23.

Question

Mr. Vick Do you know of any constitution of these United States that has a section on definitions?

Mr. Gravel No, I don't, Mr. Vick, but I can conceive of the possibility that we should have some definitions, but certainly not these kind of things. I urge the adoption of the amendment.

[Amendment adopted without objection.]

Amendment

Mr. Poynter Amendment No. 1 *[by Mr. Denney]*, on page 28, line 17, after the words and quotation mark, "general law" and before the word "means" insert the following: "or law."

Explanation

Mr. Denney The purpose of this amendment, Mr. Chairman and delegates, is that I find in eight places at least in this section the word "law" is used and in other places the words "general law" are used, and I believe that the intention of the committee was the use of that word "law" implied the use of "general law". So, therefore, I have amended the definition to say the words "general law or law" shall mean a law of statewide concern and so forth.

Question

Mr. Stagg Mr. Denney, I have seen definitions before and I think there is a general theory of definitions that you don't use the word itself in describing what the word means, and if we read what your amendment does, it says "general law or law means a law". Is that what you intended to tell us?

Mr. Denney Yes, sir, Mr. Stagg, because it doesn't mean a law. It means a law of statewide concern. That's the purpose of it. Mr. Poynter has pointed out to me however, that the amendment is slightly incorrect and it should read "or law". Is that right?

Mr. Henry Of course, he's right, Mr. Denney.... and Mr. Stagg.

Further Discussion

Mr. Perez You know, when you're hit with an amendment like this which may or may not have some significant meaning, I really don't know what to say about it, except for the fact that we do have this definition and I really don't know exactly what the purpose of the "or law" means, and all I'm trying

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know what a deep-water port was if we didn't have it defined?

Mr. Perez I have no idea. That's the whole purpose of these definitions and they are all an integral part of the whole local government proposal and without the definitions we have nothing.

Further Discussion

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, I just want to make one point clear because there may be a misunderstanding about something and I'm not suggesting that Mr. Guarisco didn't have the right to present his amendment for he does, but he had indicated to me as the author of the previous amendment that he was going to withdraw that amendment and I know that I made that representation to a number of those who signed the amendment that we've just adopted that I was the lead author on, and I wanted to make it clear that I wasn't aware of the fact that Mr. Guarisco had changed his mind. I'm not criticizing him for it. I think, however, that I must say that I definitely feel that we do need the remaining definitions that are in this article. I urge that you defeat the amendment, and I now, Mr. Chairman, if there are no other speakers, would move the previous question.

[Previous question ordered. Amendment rejected.]
[Motion to reconsider tabled.]
[Previous question on the motion ordered. Section passed: 105-7.
Motion to reconsider tabled.]

Motion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, in accordance with the intention that was announced on yesterday that we would now move to return the Local Government Committee Proposal to the calendar with subject to call with the understanding that Revenue, Finance and Taxation will begin their work on the property tax problem and that immediately thereafter they will be called back from the calendar the Local Government Proposal and go through the remainder of the provisions.

[Motion to return Committee Proposal No. 33 to the calendar subject to call adopted without objection.
Motion to take Committee Proposal No. 20 out of its regular order adopted without objection.]

Recess

[Quorum Call: 93 delegates present and a quorum.]

Reading of the Proposal

Mr. Poynter Committee Proposal No. 33 introduced by Delegate Alphonse Jackson, Chairman of the Committee on Bill of Rights and Elections, which is a substitute for Committee Proposal No. 20 also by Delegate Jackson on behalf of the committee and other members...delegates members of that committee.
A proposal making general provisions for elections.

Explanation

Mr. Jackson This is going to be brief.
Mr. Chairman, ladies and gentlemen of this convention, Article X of the proposed new constitution for this state is embodied in the Committee Proposal No. 33. We believe that this is a very important document because in the document we have tried to...we have tried very strongly to emphasize the fact that voting is a basic right, that voting is important to the democratic process in a way that all of us must be aware. We have also tried by way of this article to preserve the integrity of the electoral

process in this state. We believe that voting is a sacred right probably the most precious thing that Louisianians will ever own, so therefore we ask your full consideration of the sections contained in this proposal, and I would now ask the Clerk to read Section No. 1, if there are no questions.

Reading of the Section

Mr. Poynter Article X. Elections

Section 1. Free Elections
Section 1. Elections shall be freely and fairly conducted on a periodic basis. No laws shall interfere with the free exercise of the right to vote.

Explanation

Mr. Jackson Section 1 of this article is found in most of the constitutions of this country in which we live. We have researched the question fully. We think that this section provides for the general impetus and philosophy of the present constitution yet, it assures that we will have fair and free elections on a basis authorized by the legislature or by this constitution, and we believe that this is a very important section and we would ask for your adoption.

Questions

Mr. Sutherland Mr. Jackson, in regard to this section...I'm in favor of free elections but what does this do for age requirements such as 18, to be able to vote. It says no law shall be passed to....

Mr. Jackson There is a provision in this...in the Bill of Rights Article that establishes 18 year old...the 18th year as the time for voting. We've already adopted that in the Right's article.

Mr. Denberry Mr. Jackson, refer to the first sentence and the last phraseology there, "elections shall be freely and fairly conducted on a periodic basis". Does this not imply or negate the possibility of holding special elections?

Mr. Jackson I don't think so. What we were after...we wanted to be sure that elections were held in accordance with time as designated by statute.

Mr. Denberry What you're referring to is regular elections; is that correct?

Mr. Jackson Yes.

Mr. Denberry Well, that's why I asked the question. By just putting "elections" do you not imply at any rate, negate the possibility of having special elections?

Mr. Jackson I don't think so.

Mr. Fontenot Mr. Jackson, that last sentence, "no law shall interfere" of kind of bothers me because you have laws in your statutes requiring registration and residency requirements and all these other kinds of laws on the books which would...are for the regulation of voting privileges. Don't you think that somebody might say that this interferes with my right to vote. I mean, these laws are necessary but somebody might say that this is interfering with my right to vote.

Mr. Jackson No, I don't think so. Mr. Fontenot I [If] you look at the complete article...you will find in the sections provisions made for registration. You will find in there provisions made for residency requirements and what have you, so I do not see how that language would interfere with the requirements as suggested by way of this section...by way of this article.

Mr. Roy Mr. Jackson, to make that last sentence

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Mr. Gravel I think Section 2 certainly would not be required.

Mr. Sandoz Mr. Gravel, if we adopt your amendment, could it not take the place of the entire proposal?

Mr. Gravel Well, a good part of it, yes, sir. There might be...it really could do it, Mr. Sandoz, but, there may very well be some very, very important things here to this convention you know that some of you, or a majority of you, may feel just have to be in the constitution. I think we should weigh and consider each section carefully in that light. I don't want to say let's just disregard all the committee has done. But, most of what is in here would be absorbed, Mr. Sandoz, by my amendment. Yes, sir.

Mrs. Miller When we look at Section 3, Mr. Gravel, isn't it true that some of the federal court decisions have already taken place, like the secret ballot, no matter how much we would like to defend it and have this right in the constitution. Under the federal court decision, anyone can go into the booth with the voter. If you request assistance—under the federal court decision. So, I think I agree with you in principle that we...that most of this is statutory in this proposal. We have so many problems that we need to straighten out with good legislation, rather than with the constitution.

Mr. Gravel That's why...thank you, Mrs. Miller. The reason I said an election code was I don't think it can be done simply by saying "by law" or "by statute." I think we need in Louisiana a comprehensive election code. I might say this, that the secretary of state, two or three other officials—I think the registrar of voting machines and others—are at this time working on a modern, streamlined election code. I know Mr. Ambrose Landry can tell you more about that, because we have gotten provisions from other states. We are working laying the base or the groundwork for that kind of action by the legislature.

Mr. Willis We are still talking about Section 1, which you seek to amend?

Mr. Gravel That's correct.

Mr. Willis Now, take this proposition---a man is presumed innocent until proven guilty beyond a reasonable doubt by competent evidence. Suppose a man is in jail and you apply that second sentence to Section 1, "shall not interfere with his free exercise or right to vote," and it's not bondable, does he vote?

Mr. Gravel I think we do have some...the reason we came with this amendment at the outset is I do have...a number of us had problems with the language in Section 1. But, above all, we wanted to really implant, hopefully, the directive for an election code at the very beginning.

Mr. Willis I see what you are trying to do is to subordinate initially legislative powers, and then we'll go to the finesse.

Mr. Gravel Exactly. Frankly, I do have serious problems with both Section 1...each section in Section 1 needs to have some further things said. If we were not going to delete them, then I think they require extensive amendment. I think we will elongate this article by amendments and by exceptions and by changes if we don't adopt, initially, this first proposal.

Point of Information

Mr. Abraham On this amendment, the way it reads, if it's inserted between lines 12 and 13--the question I have: is this going to replace the existing language or does the other language come

behind it or what? I don't understand how it's going to fit in.

Mr. Poynter No, unless there was subsequent amendment, it would not replace the present because it doesn't amend it. It would insert this ahead of the present Section 1. Then the present Section 1, presuming this amendment was adopted, would be open to further consideration by the convention.

Further Discussion

Mr. Jenkins Mr. Chairman, delegates, Mr. Gravel's amendment really puts the committee at a disadvantage. We were placed in a position of having to defend in advance sections that are several pages ahead. In regard to, like Section 12 and Section 15, let me just say that there are substantive things in both of those sections that we want to protect. We want to insure, for example, that we will always have commissioners and particularly poll watchers at elections. We are mandating that commissioners and poll watchers be included in any system devised by the legislature. We are mandating that commissioners and poll watchers be included in the particulars of that system, because we don't think that is necessary. In Section 15, for example, we require that there be a judicial determination of contested elections, as opposed to some commission that would resolve disputes and things of that nature. We have gone over the election law of this state in great detail; it is lengthy. I have boiled it down to a bare skeleton outline. Frankly, I think it would be very difficult to boil it down much more. We already provide in Section 17 that the legislature will establish a code of elections which will deal with all the details of election law. Certainly, the language of Mr. Gravel's amendment would be perfectly acceptable to me in Section 17, but I don't think we have there. The difficulty that I see is starting off with this, because I don't think it is the first thing that should be said and attempting to indicate that we can leave out a number of these sections, I think it would be bad judgment to leave out any of these sections, because each one of them has something quite substantive in it that's important to preserve. We would not want a system, for example, that would do away with secret ballot or allow proxy voting or allow public funds to be spent for or against candidates for office or which would deny the right of citizens to engage in political activity and on and on and on. The purpose of Section 1, as written, is to be an introduction---a general statement---getting into this election law; to give the courts a general guide; that our elections are going to be freely and fairly conducted; and that laws should not interfere with the right to vote. Now, I guess if you look at any language written in this constitution--if you want to see monsters in it, you can--but this language in Section 1 of the committee proposal is straight out of at least five or six other constitutions which say almost precisely the same thing; the fact that elections are going to be free and that they are going to be fairly conducted; they say that no law shall interfere with the right of suffrage. That hasn't created any chaos or problems in those states. Section 1 is really meant to be read in connection with other sections that you will find in this article. When we say, for example, in Section 12 that we are going to have a system of commissioners and poll watchers chosen by the legislature, this has to be read in connection with Section 1. So, that any system devised by the legislature is going to have to be a fairly conducted system, in the selection of commissioners and poll watchers. So, what I would like to urge you to do is to, at this time, defeat Mr. Gravel's amendment. I think if he offers it at...when we get to Section 17, at that time and at that point, it would be an ideal place to have just such a section, but most of the delegates here have to be given an opportunity to read our proposal or to study election law. Please, don't shoot from the hip and start prejudging our section and our articles before we even get into the meat of it; that just is not going to

Mr. Jenkins: Well, Mr. Gravel said that if we adopt it, it would seem to me that the intent of it is to replace about half of the articles that you all have written in this section. Would you agree?

Mr. Jenkins: Well, Mr. Gravel says that. I think if we adopt it even... it won't accomplish that end, Mr. Anzalone, because there are many things in here that we do not want to leave to the legislature. There are too many things in here where we can see that if the legislature would do something other than this, it would create an unfair election system.

Mr. Jenkins: Well, Mr. Gravel says that. I think if we adopt it even... it won't accomplish that end, Mr. Anzalone, because there are many things in here that we do not want to leave to the legislature. There are too many things in here where we can see that if the legislature would do something other than this, it would create an unfair election system.

Mr. Jenkins: Well, as I said, I don't... he said that maybe that's his intent. I think even if we adopt it, though, it won't facilitate that.

Mr. Anzalone: Well, you know, just what I'm thinking is that I can remember the day when we got into a little discussion on this floor about the recommitment of the Local and Parochial Article. At that time, everybody thought that's what should happen to it. I bet you there aren't a lot of people thinking about that today, are there?

Mr. Jenkins: That could be, Mr. Anzalone.

Mr. A. Jackson: Mr. Jenkins, didn't the committee conclude that we wanted to be careful that we would not put any language in this article that would prohibit open primaries?

Mr. Jenkins: Yes, that's correct, Mr. Jackson. We were very careful throughout it to do that.

Mr. A. Jackson: Isn't the committee on record as to our position in support of open primaries, as we thought that would be dealt with in the election code?

Mr. Jenkins: Yes, that's correct, Mr. Jackson. We don't, of course, mandate open primaries in here. We don't prohibit it. We leave it up to the legislature.

Mr. A. Jackson: Isn't it true that we didn't mandate it because the subject was too comprehensive to be dealt with in this article? We tried to set forth the basic rights and the protections that we thought to be important and left the whole question of open primaries up to the election code provision.

Mr. Jenkins: Well, Mr. Gravel says that. I think if we adopt it even... it won't accomplish that end, Mr. Anzalone, because there are many things in here that we do not want to leave to the legislature. There are too many things in here where we can see that if the legislature would do something other than this, it would create an unfair election system.

Mr. Stinson: Mr. Jenkins, Mr. Gravel said that Section 2 was unnecessary. Isn't it a fact that the committee felt that we should have this in there to insure permanent registration, if that was not in there, it could be done away with?

Mr. Jenkins: Yes, Mr. Stinson. That's correct.

Further Discussion

Mr. Jenkins: Well, Mr. Gravel says that. I think if we adopt it even... it won't accomplish that end, Mr. Anzalone, because there are many things in here that we do not want to leave to the legislature. There are too many things in here where we can see that if the legislature would do something other than this, it would create an unfair election system.

are certain things that if you want to hear them, I'll tell them to you. If you don't want them, it's all right. But we say that. The interference in people voting in elections. That doesn't mean that a person who's in jail can claim that he is being interfered with, it means that... We talk about permanent registration. Maybe some of you remember twenty... fifteen, twenty years ago when the legislature passed certain laws pertaining to registration and people's names on the polls. The interference of the state and, wholesale, they just removed people off of the polls. We don't want that. You want it? Take out Section 2 if that's what you feel... that you don't believe in permanent registration. We talk about the secrecy of the ballot. That doesn't mean, as Mrs. Miller suggested, that you can't have assistance in a machine while voting. The present constitution speaks of secret ballot, but, still there are laws that allow a person to vote, under certain circumstances, when he cannot see. That doesn't vitiate secret balloting, but, what it does mean is that the legislature may never say in the future that to vote for your candidate you must stand up and vote for him or her or the other and declare, if you don't want to, how you are voting. We talk about public counting of the ballots that have been cast; that the ballots will be counted publicly. You folks ran for office. If you want somebody else to take all the ballots in the machines and go and count them in secrecy, then knock out that section. If Judge is suggesting, let the legislature handle it. They may or may not provide for it. If that's what you want, go ahead and do it. We also provide for no proxy voting in the future. If you want proxy voting, go ahead and take it out or just leave it up to the wisdom of the legislature to have proxy voting if it chooses to or not. You are not wanting... at me, except philosophically that I disagree with you if that's what you want. But, if you want it and it's within your wisdom to do it, do it. But, let's talk about what we are talking about--the loss of residency requirements for voting. We perpetuate that, that your residency may not be lost because you are out of the state for some certain number of days or weeks or months or years. But, if you want the legislature to provide some way or another that they may take that right away, go ahead and take it out. Also, we talk about joining of parties; that you will not be prejudiced if you join some political party. If you want to leave it up to the legislature, it's fine. I'm not opposed to Mr. Gravel's amendment; I think it's premature. I think the first things we should say are what we are not going to allow the legislature to do, and what we think is sacred about voting and thereafter let the legislature do all that it wants about open primaries, about the methods of having poll watchers and stuff--that's fine, but we did want to insist that the legislature could not say that we, in our wisdom, would not allow for poll watchers in the future. That's the issue here. You may take out the whole thing. I will disagree with you, but if that's what you want to do, that's your prerogative. But, let's get the matter settled, once and for all, that all we tried to do was to take about seventy-eight pages of constitutional and statutory material that we felt was essential and codify it down into these few basic things that we are talking about, that we don't want the legislature to have any discretion in tampering with it, it's up to you. Mr. Ambrose Landry was at a lot of our meetings; Mr. Russell Gaspard with the state registrar's office was there. When Mr. Gravel mentions in Section 7 that there is an inconsistency... or rather Section 8, because we say that the

What we are saying is that if you are going to have the legislature do all that it wants about open primaries, about the methods of having poll watchers and stuff--that's fine, but we did want to insist that the legislature could not say that we, in our wisdom, would not allow for poll watchers in the future. That's the issue here. You may take out the whole thing. I will disagree with you, but if that's what you want to do, that's your prerogative. But, let's get the matter settled, once and for all, that all we tried to do was to take about seventy-eight pages of constitutional and statutory material that we felt was essential and codify it down into these few basic things that we are talking about, that we don't want the legislature to have any discretion in tampering with it, it's up to you. Mr. Ambrose Landry was at a lot of our meetings; Mr. Russell Gaspard with the state registrar's office was there. When Mr. Gravel mentions in Section 7 that there is an inconsistency... or rather Section 8, because we say that the

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mean that nobody who came in second gets elected to the office. The other sentence is not inconsistent with it because you could have a tie, and you could put a semicolon and say "however, the legislature shall provide for a method of breaking ties." If you recall, we took that out of the Executive Article on my motion because we read this particular provision to you in the future.

I'll yield to any questions.

Point of Order

Mr. Riecke The speakers are discussing the whole article here, whereas, what we have before us is just the Gravel amendment. I submit that the Gravel amendment says "Subject to and not inconsistent with the provisions of this constitution." We can discuss the rest of the thing after we pass on this. We are wasting time.

Mr. Henry I think Mr. Roy's remarks are well taken because to understand the Gravel amendments you have to understand the man--Gravel. While it does not mean that the rest of the section won't be in order, it's possible if you adopted this amendment that could happen. I think that's what Mr. Roy is pointing out. So, he is speaking on....

Mr. Riecke But, is every speaker going to discuss all the amendments and then we are going to come back to this?

Mr. Henry Now, you have been here just as long as I have. You just can't tell what a speaker might discuss on the floor of this convention. We do allow a great deal of latitude and we....

Mr. Riecke But, I'm trying to cooperate with you in speeding up this thing....

Mr. Henry I appreciate it, Mr. R.

Mr. Riecke Thank you.

Mr. Roy Mr. Riecke, I agree with you to the extent that you have stated what you did. I just want to make sure that you all knew what we were talking about.

Further Discussion

Ms. Warren Mr. Chairman and delegates, I hope that I won't offend my very, very good friend, Mr. Riecke. I'm not an attorney, but Mr. Gravel opened up the door because he said his amendment would cut out other parts of this proposal. I asked him from the floor what amendments did he have in his mind that he wanted to cut out and he wasn't sure. The first time that I have seen this proposal was today. I had to ask for it. You may have never been around quicksand, but I know you have seen many shows and if you get in quicksand you just go straight to the bottom. If election...your privilege to vote is very important. I heard a number of our distinguished delegates mention here a few weeks ago, and I discussed them on the floor, that whatever the legislature gives you...remember they can take it back. If they don't want you to have it, in this case, they don't even have to give it to you. In this instance, these persons said things that people don't have much concern about, they are willing to leave this up to the legislature. I tell you, dear friends, I have a lot more faith in the legislature than I have said, but I'm not willing to leave all of this up to it. I'm not saying that I would not like to see some of this probably deleted. I'm not saying that I am trying to keep anybody from carrying out their campaign pledges, but I didn't come to this convention to try to help anybody carry out their campaign pledges. I don't think that's what we came here for. I think we should look at this thing real carefully, consider it all the way down the line. If Mr. Gravel's amendment is going to cut out a lot of things that he said it is going to cut out, without me having a chance to hear some debate on it, I am not for Mr. Gravel's amendment.

I don't think you should be either. You're going to ask you to defeat Mr. Gravel's amendment. Do you have any questions?

Question

Mr. O'Neill Mrs. Warren, wouldn't you kind of like to know what sections they are proposing to take out in case this thing would pass? I sure would.

Ms. Warren I asked from the floor, and I got supposedly some would. But, I would just like to know. If somebody has one on elections in their hip pocket; they can pull it out now, because I would like to see it before I vote on it.

Are there any more questions?

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, Mr. Gravel is a scholar and a gentleman, but even with those attributes, oftentimes you can find him in error. He suggested to you that we ought to start off with this amendment. I don't know anything that's more sacred, I don't know of anything that is more important, to the people of this state than to assure them by way of this constitutional provision, that we ought to have free elections. Now, we are not opposed to open primaries. We are very much aware of all of the problems that we have in this state as it relates to elections. Therefore, you will find a provision in this proposal calling for an election code. We have no objection at all if Mr. Gravel were to offer his language at that time to amend that section to make it read as he would desire, to cover all of the points that concern him, but, we are very much opposed to him suggesting that we ought to adopt this amendment at the beginning of this article in order to delete other sections. Now, he suggested from this platform that he wanted to eliminate Section 2. I would remind you that Section 2 is a very, very important section; Section 2 is the backbone, I think, of a free democratic society. It calls for open primaries in the constitution the principle of permanent registration. I don't have to tell you ladies and gentlemen all of the pains that some people in this state endure when we do not have permanent registration. I don't have to tell you of all of the people in this state that were purged from rolls time after time after time. Do we want to revert to those days? Do we want to usher in again an atmosphere where people did not believe that they had the right to participate in a democratic election? Is it that we want to deny certain people the right to participate? I think that Mr. Gravel is wrong when he says that Section 2 should not be in this constitution. It is not only basic, but it is important; it is not only important, but it is a right, it is not only a right, but if our democratic process is going to endure, we are going to have all of the people participating. I would ask Mr. Gravel to withdraw his amendment and offer it again at the appropriate time and place. I believe that these sections ought to be considered as they have been offered by way of this committee and that each of them are important. We certainly want to emphasize that we have no opposition to open primaries, that we asked for an election code to be established by the legislature. I do not believe that this amendment is in order at this time if it is designed to delete Section 2 and other important sections of this article.

Mr. Lanier Delegate Jackson, is my memory correct in that in the Bill of Rights we guaranteed the right to vote as one of the rights in the Bill of Rights that would be preserved inviolate and inalienable?

Mr. A. Jackson That is correct. But this provision here talks about the apparatus by which individuals can exercise that right--elections.

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the convention, I think the issues that have been argued up here by the previous speakers have completely missed the boat on this thing. We are dealing with one thing and that is to insert a clause in the very beginning of this proposition which would read "We shall adopt an election code." Now, this is not, by any means, at this particular time going to delete any of Committee Proposal No. 33. I think Mr. Gravel fairly well summed it up in his remarks. I think I thought this could take the place of some of the provisions, but that he would leave that to the discretion of this body. So, in effect, what we can do, is go ahead and place this much needed mandate into the constitution, advising the legislature that they have got to adopt an election code. Now, we have heard arguments up here about "Well, what about Section 2, the rights guaranteed under Section 2, those guaranteed under say Section 13 and so forth?" We can cross these bridges when we get to them. But the thing is, this is the code we have got this mandate. I rise in favor of this and ask that we all support Mr. Gravel in this amendment.

involved when the state has a right to regulate our parish roads. We have a right to regulate them and get an injunction to prevent it, and we did it. So, there's no ulterior motives. We're not trying to trick anybody. We're not trying to do anything simply, to have stated at the outset the principle that this conventional election code to provide for the registration of voters and the conduct of all elections and the conduct of elections in its broadest sense, it may well be that this body will decide, on we have passed this section, that we have passed this section, the other committee material. But, that is not the purpose of this. We are certainly not here to suggest, no more than Mr. Gravel would, to suggest to you that you should or should not adopt anything that follows.

Mrs. Warren would like to know if, when the President wanted to include an election code, he could have just used and ask that it be put up, instead of being No. 17, be No. 1? It would have had less lines and less words in the constitution.

Mrs. Warren,

Mrs. Warren But you have more words in it than you have now with him putting it in the front. In other words, you've got more verbiage in here now, when you could have just substituted Section 17 and put it for No. 1, and let the numbers speak for it.

"... But, the extra verbiage that we have has a purpose.

Mrs. Warren I understand that.

Mr. Burson: It has the purpose of saying that that election code must include the registration of voters and the conduct of all elections, all elections being there, quite clearly to say that that election code cannot provide just for primaries and have general elections by another law, but we want

Mr. WATKINS: And what if we could not get permission to cut timber that grows on private land?

Mr. Burson I think that...Mrs. Warren, he said that the convention might decide that it might not want some of the following sections, and that may well be. But, that's not the purpose why we presented this.

Mr. Henry. The gentleman requests a record vote. Because it's for the purpose of adding a section, in my appreciation, it's going to be an automatic

Mr. Perez: I just question the fact that this is a new section. It's my understanding it's part of the existing section. I don't...this is Mr. Gravel's amendment. I don't know, but...

Ms. A.9.2.2, v. 1, f. 102v, recto. In manuscript, there is a small, faint, handwritten note in the left margin, which reads: "The end of the world." This note is written in a cursive hand, and is located in the left margin, approximately one-third of the way down the page.

Point of Information

Mr. J. Jackson. Well, Mr. Chairman, if that's the way you want to go, I would agree that section 10, as amended by the committee, would, in effect, be a

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make it Section 2, or 1(A) or something like that, sir.

[Amendment adopted: 93-14. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed: 93-14. Motion to reconsider tabled. Motion to take up other orders rejected: 21-75.]

Amendment

Mr. Poynter Mr. Juneau's amendment, which has been ordered on, reads as follows:

Amendment No. 1. On page 1, delete lines 13 through 16, both inclusive, in their entirety.

Explanation

Mr. Juneau Mr. Chairman and fellow delegates, I had originally thought, as many did, that this was...the previous amendment was in addition to this language, but I think the same principle would apply. I just frankly don't see any need for this language. No one is going to fault the words, of course, "the election shall be freely and fairly conducted." I think that's implicit in the fact that we have gone through the Bill of Rights Section, provided that a person shall have the right to vote. I might add that there are some distinct and some very bad problems in the language, as I see lines 14 through 16: for example, the words "on a periodic basis." What does that do when we get to talking about special elections? Now, I just think that presents a lot of problems. But, more crucially, and more important than that is the second sentence which says that "No law shall interfere with the free exercise of the right to vote." One of the immediate problems that comes to my mind would be the right of the laws with respect to registration. Now, there was some mention about what other state constitutions have done in that regard. I have a copy of the model state constitution. It very simply provides something along these lines: "The legislature shall by law define residence for voting purposes, insure secrecy in voting, and provide for the registration of voters, absentee voting, the administration of elections, and the nomination of candidates. I respectfully submit to you that that is basically the same concept and the same language as the Gravel amendment we just adopted. I think that that language is inclusive enough and is broad enough to include the concept that we have in this amendment. I see more problems in this language than I do than in good is provided. I would move for its favorable adoption.

Questions

Mr. Roy Mr. Juneau, do you understand that the second sentence "No law shall interfere with the free exercise of the right to vote," that that means that first of all, you have to have the right to vote to exercise. Do you not agree?

Mr. Juneau And we have given that in the Bill of Rights Section. That's right, sir.

Mr. Roy Where have we given it?

Mr. Juneau Sir?

Mr. Roy We have given it to all eighteen-year-olds, but it may be suspended for certain times or periods. Is that right?

Mr. Juneau That's right.

Mr. Roy Well, then, don't you realize that all we are saying is that except for the fact that you must be a registered voter and meet those qualifications, and you may not be in prison or something, that the state may not pass a law requiring you to be, like, in a suit to go vote. That would be an interference with a free exercise of the right to

vote.

Mr. Juneau It would appear to me, Mr. Roy, that it's very feasible in the future that circumstances will arise where conflicts can appear between those two sections--the one we gave the right to vote... I would be more content in giving the right to vote, which we did in the Bill of Rights section, and letting that language, and that language alone, sustain by itself.

Mr. Denberry Mr. Juneau, if Section 6 says that "every qualified elector shall be privileged from arrest, etc., except, and while exercising the right to vote in all cases except felony or breach of the peace," does this not also conflict with the second sentence in Section 1?

Mr. Juneau It does to me, Mr. Denberry. The point that bothers me, it conflicts not only with, I think, provisions in this article, but there are many circumstances I can't even fathom at this point that it may be inconsistent with in the future. The point being, I think we're creating a bigger problem than what we are trying to accomplish.

Mr. Jenkins Mr. Juneau, do you realize that this same language is found in a number of other state constitutions, and that it has caused no problems in those states?

Mr. Juneau Well, I can't...I'm taking your word for it, Mr. Jenkins; I don't know that; but if you say that it has caused no problems, so be it. I'm just saying, personally, see problems, and I can only speak for what I can read by the language herein. In that connection, as I said, in contrast with that I have read to you the provision which was taken from the model state constitution, which I understand was sort of a gleaming of the best speeches of many of the constitutional provisions across the state, and which has no such language in it.

Mr. Jenkins Do you understand, also, that the purpose of it, and our intent of it, is to simply give the courts a general guide by which they can insure that every procedure and every law that we may have is done in a fair manner?

Mr. Juneau I understand the intent, and I wholeheartedly endorse the intent of the committee, Mr. Jenkins. My only problem is I think that it creates more problems than what was originally intended.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I rise in opposition to the amendment as proposed. As you can recall, on the first amendment that came before you, there was some considerable concern on part of the committee as to if other sections...was this an attempt to delete other sections. It has become very obvious that even by the comments of, I believe that's Mr. Newton, I believe, of the person speaking before me. He said that based on the adoption of the Gravel amendment, that he very seriously questioned whether we should have Section 2 in there. I think that Mr. Jenkins has brought up a distinction. In the Bill of Rights we did provide for the right to vote in saying that that's inviolative. But, at the same time, we've got to consider the free exercise of a person's right to vote. It has been stated to you very clearly that this language does appear in other constitutions, and that necessarily, in terms of court interpretation, this would not provide any conflict whatsoever between the Bill of Rights or Section 6 or Section 2. On the matter of special elections, what's more periodic than special elections? I...my experience has been that you have periodic special elections. I don't think that we are to be so embedded in the problem that...that we might be denying special elections because I do not believe that the language

the removal of special elections. In fact, as I read the article and I hear the comments of the speakers up to this point, it's very obvious that ... I think, that some of the fears that the members of the committee and members who spoke in opposition to the Gravel amendment are becoming very obvious, that, in effect, when we adopted one amendment, we, in effect, even though it didn't say "we're going to delete the rest," it, in effect, resulted. You see the trend now resulting in deleting Section 2. I would assume that we delete Section 3. I would suggest that if you do have any serious problems with the wording as being proposed by the committee, then I would suggest that we prepare an amendment to provide the kinds of language to safeguard whatever particular interest a delegate may have. But, I suggest to you, as the language as written, and the arguments against Section 2, one that is... would be in conflict with Section 6 does not really hold that much merit. The fact that it may be in conflict with... the recent amendment, we have adopted, and Mr. Gravel and the proponents of that amendment, and even Mr. Burson indicated that that was not the effect. Really, that on the matter of special elections, it does not do any harm nor violence whatsoever to special elections. So, I would ask that you support the committee and reject the amendment. That if there are amendments in terms of the language that is proposed, that we entertain and we vote as to whether putting in proper language. I don't think that... to say that we do not... that this may conflict with some other language in this proposal is valid in the light that the committee has had numerous discussions concerning inclusion into this delegate proposal... I'm sorry, this committee proposal. I would ask you to reject the amendment.

REPORTS OF COMMITTEES

Announcements

[Adjournment to 9:00 o'clock]

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Saturday, October 6, 1973

ROLL CALL

[70 delegates present and a quorum.]

PRAYER

Mr. Alexander Oh, Lord God of our Fathers, Thou who has been so good to us in the past, we come this morning again to discuss these problems that confront us in our state. Bless each one of us individually. Bless us collectively as we grapple with these problems. Guide us that we may serve our people well. Make us trustworthy and honest, and then when we come to the end of our toils and struggles in this world, we pray that Thou will grant us admittance into Thy Kingdom where we shall praise Thee forever. In the name of Jesus, Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

REPORTS OF COMMITTEES LYING OVER [UNFINISHED BUSINESS]

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 33 introduced by Delegate Jackson, Chairman in behalf of the Committee on Bill of Rights and Elections. The proposal is a substitute for Committee Proposal No. 20 by the same gentleman on behalf of the Committee on Bill of Rights and Elections and other delegates, members of that committee. A proposal making general provisions for elections. The subject of the proposal is that the convention has adopted a new Section 1 dealing with an election code, has voted to delete the original Section 1 constituting lines 13 through 16 of the proposal, has a contemplated amendment, I presume, by Mr. Duval under consideration at the present time.

Personal Privilege

Mr. Tate Mr. Speaker, fellow delegates, the radio reports that the Egyptians and Syrians have invaded Israel on this Yom Kippur, their Jewish Day of Atonement. It brings to all of our minds the fragile nature of world peace and of civilization. I think it might be appropriate for... just to bow our heads for just a second or two to pray to our Lord that the cessation of hostilities is accomplished quickly. Amen.

Amendment

Mr. Poynter "Amendment No. 1 [by Mr. Gravel] on page 1, between lines 12 and 13, immediately below Section 1 as added by Floor Amendment No. 1 by Delegate Gravel, proposed and adopted by the convention on yesterday, insert the following section: "Section 2. Election Code: ...add this phrase, to your copy, in addition in the title of the section. "Section 2. Election Code; Right to Vote."

If you would insert that on your copy, "Right to Vote."

"Section 2. Subject to and not inconsistent with the provisions of this constitution, the legislature shall adopt an election code which shall provide for the permanent registration of voters and for the conduct of all elections; except as otherwise provided in this constitution, the right to vote in elections is guaranteed to all citizens of this state."

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, if I may say so quickly before going into the amendment, I'd like to announce that at least in part, Judge Tate's supplication for

peace has been partially answered. Chris Roy and I have reestablished our partnership, and we are going to continue together, I hope, for many years yet to come.

I'd like to also point out and state to the convention that although this proposal appears to be my proposal, it's joined in by Mr. Burson who was not here at the time that the proposal was typed up. He's authorized me to say so.

Now ladies and gentlemen of the convention, I think there was some misunderstanding yesterday with respect to the intent of Section 1 that this convention adopted. In order that there will be no question, but that we were not, Mr. Burson and I were not, proceeding with any ulterior motives at all, and after meeting with members of the Bill of Rights Committee on an informal basis, and discussing this matter with other delegates, it appeared that there was some rather serious concern as to whether we might be trying to get away from the idea of permanent registration of voters and, also, getting away from constitutionalizing, without any doubt and without any question, the concept that voting is a right and not a privilege. With those thoughts in mind, we have prepared a new section which I hope will pass. If it passes, then it would be in order for us to delete Section 1 that we adopted on yesterday. Let me then say very clearly and explicitly to you, or at least as clearly... as clearly and explicitly as I can, what this proposal does. May I suggest, ladies and gentlemen of the convention, that it is significant, and important, although these two concepts encompassed by this amendment are basic.

No. 1. This amendment directs the legislature to do what we all know needs to be done and that is adopt an election code. I don't think I need to elaborate upon the necessity that we have in the State of Louisiana a complete doctrine dealing with registration and the conduct of elections.

No. 2. This amendment, in addition to what we did yesterday, now makes it abundantly clear that the election code must provide for permanent registration. We have permanent registration in every parish in the State of Louisiana now with the possible exception of one. I ask I ask I ask you that. So all we are doing with that provision is maintaining the permanent registration system which we have in the State of Louisiana.

The third thing, that this does, and it does it without any question, is to say that voting is a right and not a privilege. We are going to eliminate forever, if we adopt this amendment... I hope we do... the argument that is sometimes made that the opportunity to participate in free elections and a free society is a privilege and not a right. So, clearly we want to establish that principle in the constitution. I think it's important to observe that this amendment makes other provisions of this constitution here relevant, because it could very well be said that... are there... very well be asked, "Are there any limitations on the right to vote?" There are limitations on that right only hear me, to the extent contained in the Bill of Rights, where we have set forth the age... the minimum age qualifications for voting, and provided... and provided in the constitution already in the Bill of Rights, those instances where the right to vote can either be waived or more correctly, let me say, forfeited. Now, we have taken care of that already in the Bill of Rights. I think one of the things that we could do, and should do, is to adopt this amendment and to announce to all of the people of the State of Louisiana, by the action so taken, that we want a streamlined, comprehensive code of election laws, that we want permanent registration to continue in the State of Louisiana and that our citizens have the right to participate in the election processes.

Mr. Chairman and ladies and gentlemen of the convention, that's what this amendment does. I urge that we join together and adopt this amendment and the concepts embodied therein.

I'll yield to any questions.

Questions

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Mr. Poynter "Amendment No. 1 [by Mr. Gravel]. On page 1, between lines 12 and 13, delete Floor Amendment No. 1 properly ended by Delegate Gravel and Burson and adopted by the convention on yesterday."

Explanation

Mr. Gravel They delete the action that we took yesterday relating to the Election Code because that action is fully encompassed and made part of the section that we just adopted. Therefore, that amendment is now unnecessary.

[Amendment adopted without objection.]

Reading of the Section

Mr. Poynter Original Section 2, lines 17 through 20 of the proposal.

"Section 2. Registration of Voters
Section 2. The legislature shall provide for registration of voters embodying the principle of permanent registration."

Personal Privilege

Mr. Gravel Mr. Chairman, I think it, some of the delegates, I think, may be a little bit concerned about it and confused. I think we would clear everything if we could make a technical amendment to make the amendment that was just adopted instead of being Section 2, Section 1. I think the Clerk would ordinarily do it, but maybe we, by unanimous consent of this convention, could designate the section just adopted as Section 1 instead of Section 2.

I so move, Mr. Chairman.

Mr. Henry Well, wait, Mr. Gravel. Now you just can't move it like that.

Mr. Gravel All right. I'll get an amendment, then, on it.

Mr. Henry What we are going to have to do is call from the table...

Mr. Gravel No. No, I'm not going to do that.

Mr. Henry Well, I'm sorry, but, you know, we've got to go by the rules here. So, we'll just clean it up some other way.

Recess

[Quorum Call: 95 delegates present and a quorum.]

Personal Privilege

Mr. Mire Thank you, Mr. Chairman, ladies and gentlemen of the convention, I would like for you to give me your attention for just a little while this morning. I think next week we'll probably be getting into what we all consider probably the most important one phase of this convention...property tax. We've talked about rights. We've talked about the legislature. We've talked about the judicial system. Now we are going to get into everybody's pocket. I believe that everybody is going to be very much interested in what we are going to do.

I'm asking you today, over the weekend, each one of you to go back home, take a little while, go back and talk to your assessor, look at a specific piece of property, not some sophisticated figure, or some sophisticated survey that somebody has made, put together, they may give you some percent, some may give you some statistics, so-called. I ask you to look at your own home, your own lot, your own business, your brother's business, your mother's business, your father's business. Go to your tax assessor, find out what it's assessed. Find out what value it's placed on the tax roll by now. Then look at fair market value. You know what it's worth. You know what today it would

bring on a fair market on the market. Look at it. Figure out for yourself what percent you are assessed. I don't want you to put no assessor on the spot. I don't want you nobody on the spot. I'm not trying to take away from anybody anything. I'm only trying to get to the facts of the matter...the facts of the matter. Satisfy yourself so that next week when we start talking about this proposal, you will, yourself, feel that you can intelligently question it, intelligently raise it and, I think, vote for the best interests of the people of the state.

Thank you very much for your attention.

Personal Privilege

Mr. Lowe Mr. Chairman, fellow delegates, just two things I'd like to mention to you very briefly. Number 1, we said we'd pay off on the tenth and the twenty-fifth. I think we are going to be able to make payday Tuesday. I imagine we're coming back Tuesday. If not, it will be Wednesday. But if we're back Tuesday, we'll be able to pay Tuesday. Secondly, I think we have gotten into the convention to the extent that many of you would like to know something about finances. Although we have been mailing to you monthly a summary of all the financial transactions of monthly and for the year to date in the "CC/73 Reporter", I'm not sure that that's adequate for you. So I did sit down and discuss with the Chairman the earlier part of this week, the necessity, probably, for putting in the official Journal a transcript of all of the financial transactions from the year to date, and the current month in the official Journal once a month so that we would have permanent record. So, starting next week, we will publish in the official Journal the transactions from January 5, 1973, through September 30, 1973, that period for the year to date, along with a monthly statement compared to the budget so that you can see how much we are over and under budget for the year to date, and how much we are over and under budget for the current month. Now, in addition to that, any questions you have that you'd want to go into the details behind those figures, you contact me and we can give you anything that you need that would back up those figures that you can take home and answer your constituents or anything else. So starting next week, we will publish in the official Journal all of the financial transactions.

Thank you, Mr. Chairman and delegates.

Mr. Henry We have, now, two sets of amendments to go with on this Section 2, Mr. Clerk? Why don't you kind of recapitulate for the delegates where we are and what we've done up to this point.

If you will, ladies and gentlemen, please give Mr. Poynter your attention so he can sort of bring everybody up to what we've done so far.

Mr. Poynter On yesterday, at the very outset, prior to the consideration of the original Section 1, Mr. Gravel proposed and adopted an amendment providing with respect to an election code which became, in effect 2, which of course, was adopted. That, Mr. Juneau offered an amendment which was adopted by the convention which deleted the original Section 1 from lines 13 to 16. This morning, Mr. Gravel then offered an amendment which followed that Section 1 which he had added and was, in part, the same, dealing with an election code which he entitled Section 2, which of course, was adopted. Thereafter, Mr. Gravel moved to reconsider, call from the table and reconsider, and the convention voted to delete the Section 1 that he proposed in this convention adopted on yesterday. As a result, there is only one section which is presently adopted to this proposal. It is styled Section 2 as opposed to Section 1. There is no Section 1 of any variety at the present time, which is the Gravel amendment which I'm sure you still have on your desk.

You now presently have under your consideration, the old Section 2, being Registration of Voters, constituting lines 17 to 20 of the amendment...of

...of this amendment.

Amendment

Mr. Henry These are amendments offered by Delegate Abraham.

Amendment No. 1. On page 1, line 18, immediately after the word and punctuation "Section 2," strike out the remainder of the line and strike out lines 19 and 20, in their entirety, and insert in lieu thereof the following:

"Declaration of political party affiliation shall not be a prerequisite for registration".

Amendment No. 2. On page 1, line 17, immediately after the words and punctuation "Section 2," strike out the remainder of the line and insert in lieu thereof the following:

"Registration; Declaration of Party Affiliation Not Required".

Explanation

Mr. Abraham Mr. Chairman, ladies and gentlemen, ...ing of this convention, in talking to many people as to the type of things that they would like to see in a constitution, this is one of the questions that was asked, as to whether or not a person should be required to declare his affiliation in order to be... in order to register to vote. Without exception, and everyone I talked to, every person I talked to, everyone felt that it was something that should not be required of them. Now, let me tell you what happened when I got out of the service in '46. At that time, you had to be twenty-one years old to register to vote. I went down to register, and in registering, the registrar of voters asked me which party I belonged to. Well, my obvious answer was I didn't belong to any party because I had never voted yet. I didn't know which one I wanted to belong to. So, she said, "Well, in order for you to really vote, to exercise your right to vote... we do not really have a two party system in this state... you must register as a democrat if you want to vote in a local election," because we... those were the only people that we had running in the local election. Through the years, I have talked to many people about this, as to why this had to be this way. Well, this happened to be the law. But, there are many people in this state, like myself, who may have no strong political party ties. There are many people in this state who want to vote for the person, regardless of party. This, I have always done; I have always voted for the person. But, what we are doing, in effect, if a person does not want to say "I am officially a member of the democratic party," we are, in effect, disenfranchising those people from voting in local elections. Many people object to this, they rebel against it. This is what this amendment does: it spells out that you do not have to declare your party affiliation

...that it's... put this in the statutes. But, I...

...are exercising your right to vote. I don't think...

...f this amendment.

...this is what I'm getting from what you said. Now, are you inferring that you would like to do away with the two-party system, or the three-party system, or whatever number of party systems they have in this state?

Mr. Abraham No, ma'am. There is no intent here to do away with anything. What this does away with, when I go to the courthouse to register to vote, it's none of the courthouse's business to which party I belong to. This is a matter between the party and myself. I am going down to register to vote as a citizen, and I do not feel that they should tell me as to which party I must belong to, or that I have to register with a particular party. If I do not want to belong to a party, that's my business.

Mrs. Warren You don't really have to belong to a party, you can just be independent?

Mr. Abraham I would like to be independent. But, if you register as an independent at the courthouse today, the only elections you can really vote in is going to be the one general election. You cannot vote in party primaries.

Mrs. Warren This is a kind of confusing thing to think that you would really want to be with a party and you don't want to be identified with it.

Mr. Abraham That's right. I may want to be with a party... I may want to vote with this party today; in the next election, I may want to vote with another party, because I want to be free to choose a candidate rather than the party.

Mr. Tapper Mr. Abraham, isn't it a fact that now you can... as the present law is, you can register as an independent or with no party affiliation? The only prohibition, isn't it true, is that if registered... not registered as a democrat then you can't vote in the democratic primary? Isn't that the fact?

Mr. Abraham That's true, but the actual... but the facts are also that in many, many, many local elections there is only one party primary. As a result, I am denied the right to vote in my local elections simply because I do not say I want to belong to a particular party.

Mr. Tapper But, isn't it a fact that you are allowed to vote in a general election, and that anyone can qualify in the general election?

Mr. Abraham But, in the general election there is no one to elect other than what... you have one party to elect from, in many local elections. There is no two-party system in this state, as such, to amount to anything right now.

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with the party, though, and not with the country, nor with the state.

Mr. Munson Now are you going to go about registering with the party?

Mr. Abraham That should be the party's problem. They should set up the machinery for that.

Mr. Hernandez There's one question I want to ask about this. Under the terms of your amendment, a card-carrying communist can just walk in and register and not have to indicate that he is a communist.

Mr. Abraham Do what, now?

Mr. Hernandez A card-carrying communist, a member of the communist party, can go in and register and vote in the primaries and in no way indicate he is a communist.

Mr. Abraham His party affiliation is no problem to me, and should not be any problem to the state, as such. Now, we are talking about the right of people to register to vote. I should be able to go and register to vote, period. I'm not going down to register by a party; I'm registering to vote. If this man wants to belong to the communist party, or the American party, or the democratic party, that's his business. Let him go register with that particular party. But, we are inserting party politics, now, into the person's right to register to vote, and this is what I am talking about.

Mr. Hernandez Well, this does give them the right, then, to...to a card-carrying communist to go vote in the elections without indicating that he is a member of that party.

Mr. Abraham Well, Mr. Hernandez, I'm not going to get into a discussion as to what card the man carries. All I am saying is that he carries whatever card he wants, and when he registers to vote then he should not have to declare his affiliation.

Mr. Arnette Well, I'd like to clear up maybe a little misconception here. Couldn't a card-carrying communist go down and register as a democrat?

Mr. Abraham Certainly he could.

Mr. Henry Or a republican.

Further Discussion

Mr. Fulco Mr. Chairman and fellow delegates, I only wanted to say that if we pass this amendment, it will take away from an amendment that will later come to you on Section 7, the necessity of specifying party designation opposite the name of a candidate on the ballot. Now, I hope that you will vote this down, because the people have a right to know what party you belong to. In fact, it's a courtesy. It's a courtesy to the people of your own party, if they're not aware of the fact that you are a democrat, or republican, or whatnot. It's the most absurd and ridiculous thing you've ever heard of, not to have a party designation on the part of...of your registration. So, I won't take up any more of your time. Mr. Speaker, are there any more speakers?

Questions

Mr. Smith Mr. Fulco, don't you and I and about twenty others have a lot better amendment than this will do? This one won't do anything, will it?

Mr. Fulco That's right. We have about...Mr. Smith and I have about twenty-five coauthors on an amendment calling for an open primary. It will require opposite the candidate's name, the party designation. Now, if this amendment is passed, it will nullify the party designation on the ballot which, I think, is something that the people should have and have

a right to know what party the candidate is a member of.

Mr. Stinson Mr. Fulco, if this amendment is...if it happens to be adopted, which I hope it won't, would it, in the future, be able to qualify in all party elections? I could run as a republican, a democrat, and an independent?

Mr. Fulco Well, it would appear to me that you would, yes.

Mr. Stinson Mr. Fulco, when you said that this thing, if adopted, wouldn't do anything, don't you think you were in error? Don't you think it would do a heck of a lot?

Mr. Fulco Well, what I say is this: sure, it can do an awful lot.

Mr. Stinson Well, you said it wouldn't do anything.

Mr. Fulco No, I meant it wouldn't do anything insofar as...

Mr. Stinson You meant it wouldn't do anything good, that's what you meant, wasn't it?

Mr. Fulco Well, nothing good, no.

Mr. Willis Mr. Fulco, how would the registrar of voters prepare a poll list for a democratic primary unless they are delineated as to who is what?

Mr. Fulco I think your point is well taken. I don't see how they could show any number of...what number of republicans, what number of democrats, what number of any...

Mr. Willis It's not a question...I don't mean a question of numbers, I mean a question of kind. Not quantity, but quality.

[Mr. Fulco: I think the registrar of voters would have to prepare a list of voters who are registered as democrats, republicans, or independents.]

Further Discussion

Mr. Grave Mr. Chairman and ladies and gentlemen of the convention, first of all, I'd like to state that philosophically I'm opposed to this amendment, whether it be in the constitution, or the statute, or anywhere else. But, I don't intend to make any long statement to you about it. I do suggest, however, that this is precisely the kind of thing that the legislature can and should consider in the adoption of an election code. I don't...I want to emphasize that I don't mean by that, that I support the concept because I think it shouldn't go in the constitution. I don't think it should even go in the code. But, nevertheless, the legislature, when it considers the code, can and should consider this kind of a proposal. Frankly, I think, as a consequence of what we have already done, that not only do we not need this amendment, but there's doggone little that we need in the rest of this article. Thank you.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, there have been many self-serving declarations made from this podium, and at this moment, I don't intend to depart from that normal practice. When this convention undertook the debate on this subject yesterday, I read Mr. Abraham's amendment on this subject. It had previously been, I think, entered as a delegate proposal. He also had a delegate proposal on open primaries. Mr. Gravel said that philosophically he's opposed to this. Other speakers preceding me and questioners have stated that this would impede the voting process in some way or other. But, the principal point Mr. Gravel made was that this kind of situation and this kind of language ought to be in an election code. To a degree, I disagree with

Mr. Velazquez: Mr. Chairman, fellow delegates, I think that the United States has a long history of a two-party system. There is no real way to differentiate between a man and his political party. The party, to one extent or another, supports the candidate; and the candidate, to one extent or another, takes on the load of the party, the party of America is the history of political moderation. The two major parties were not strictly divided along ideological lines. A great political breakdown in America occurred

geographic and philosophical lines. The great national parties have been a moderating influence in America. They have tended to prevent the splitting into many parties, which caused the destruction and instability of the nations in Europe prior to World War II. I think that if we start this tendency now, we are going to lead to the... the greater instability not only in Louisiana, but throughout this nation. I move the adoption... move that you vote against this amendment. Thank

Mr. Abraham: I simply want to point out a couple of things. In the original proposal by the committee, in Section 1, they said, "No law shall interfere with the free exercise of the right to worship." Well, I say that no law shall interfere with the free exercise of the right to worship. In Section 5, the committee proposal says, "No law shall deny the right of each person to organize, join, support, or oppose any political party, organization, or to support or oppose any political party, organization, or to accept or provide for the support of any political party, organization, provided in this constitution." Now, we are being real careful to say that the State cannot interfere with...between a person and his party. This is all we are saying here. It is no business of the State to interfere with a person's party. I urge your adoption of the amendment.

Questions

Mr. Alexander: Mr. Abraham, I'm trying to determine in my mind, the mechanics of what would happen if your amendment were adopted. When the registrar of voters prepares his list for the commissioners, how would he do that if the party affiliations are unknown? That is, everybody is registered without party affiliation. How would he know who can vote in the democratic primary and in the republican primary, or who is independent?

Mr. Abraham: My whole point is this, Mr. Alexander, that that registrar of voters does not need to know as to which party I belong to. All he is supposed to do is certify that I am a qualified elector of this state. Now, it's up to the party to control their elections.

Mr. Alexander You mean, some have shared with
vote interchangeably...

Mr. Abraham: I'm not going to get into the mechanics of the election code. The point I am trying to make here is that the state certifies me as being a qualified elector or not. It does not need to certify me as to which party I belong to.

Mr. Alexander: Then the party itself could come in and check the rolls and determine who -- how would those individuals know? for example, there are 1.6 million, or something like that, democrats in Louisiana.

Mr. Abraham I would say, then, let the party register its own people, not the state.

Mr. Alexander: I still don't know, Mr. Abraham. Now, well, getting back to the question, is he a democrat? That's the only thing I'm trying to determine.

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Mr. Anzalone Do you realize that we still have the primary system in the laws of this state?

Mr. Abraham Yes.

Mr. Anzalone Well, how in...how on earth is this going to work if you're talking about primaries and you have no party affiliation?

Mr. Abraham Very simple, Mr. Anzalone.

Mr. Anzalone I hope it is.

Mr. Abraham I don't see any reason why the parties can't set up their own registration system the same as the state has set it up. All I'm trying to say here is that that state does not need to get involved into registering people by parties.

Mr. Juneau Mack, let me see if I can understand. In other words, you are not permitting that the state will run the elections through the voting machines and so forth, are you?

Mr. Abraham Do what, now?

Mr. Juneau You are not saying that the parties will establish and run the elections through the voting machine system, are you?

Mr. Abraham No, sir.

Mr. Juneau Well, then, how are we going to end up with the state running the voting machines, the mechanics of the election, and then, they in turn have to take a list which is given to them purportedly by a party as to who is or who is not a republican or democrat. How would you do that?

Mr. Abraham It's done elsewhere, Mr. Juneau, and I'm sure it can be done here. I'm not...I don't know the actual mechanics of it.

[Record vote ordered. Amendment rejected: 11-94. Motion to reconsider tabled.]

Amendment

Mr. Poynter Amendment No. 1 [to be known]. On page 1, strike out lines 17 through 20, both inclusive, in their entirety.

Explanation

Mr. Newton This deletes Section 2 because the language of this is contained in the General Amendment that we adopted this morning. The committee has no objections.

[There is no objection to the amendment adopted without debate.]

Reading of the Section

Mr. Poynter "Section 3. Secret Ballot
Section 3. Voting shall be by secret ballot, and the legislature shall provide a method for absentee voting. Proxy voting shall be prohibited. All ballots cast shall be counted publicly and preserved inviolate until any election contests have been settled".

Explanation

Mr. Roy Ladies and gentlemen of the convention, I'm going to be very short on this. We constitutionalized the things which we think should never be changed by the legislature, as much as I believe in it. One is that you will have secrecy of the ballot. The legislature was mandated to provide for absentee voting. Now, we just couldn't go into all of the problems about absentee voting. If you look at your present constitution, there are a number of sections dealing with that. We just felt that we would mandate the legislature to go into

it and that would suffice. But, it would have to be secret. They couldn't have absentee voting that would be not secret. Proxy voting, I don't think anybody in here wants. If you want it, well, then you will have to take this part out. But, I don't think the legislature should ever allow for proxy voting. The third thing is that the ballots must be counted publicly and preserved inviolate until any election contests have been settled.

Questions

Mr. Lanier Mr. Roy, how would you go about preserving a voting machine inviolate?

Mr. Roy You don't preserve the voting machine inviolate, you preserve the ballot. The ballot is a method of making one's choice in a political contest as to what he wants or doesn't want. So, you preserve the tabulation of the voting machine.

Mr. Lanier Now, if there were an election contest, would this not mean that all of the voting...say it was a statewide election, wouldn't this mean you...?

Mr. Roy No, no, it would not mean that and it doesn't mean that under present law. It means that the tabulation would be preserved unless, Mr. Lanier, a person contended in his suit that the machines had been tampered with or fixed. Then, under the law as it now is, you would have the right to secure the machine itself for examination and checking.

Mr. Lanier Your interpretation of the word "ballot" does not mean the listing on the voting machine of the votes?

Mr. Roy It means the tabulation of the voting machine.

Mr. Goldman My questions were almost similar to the ones just asked you. What I was going to ask, if there is a contention that the machine has been tampered with and it's in a first primary, and those machines have to be held inviolate until such time as judicial decisions can be made, what happens to the second primary with those machines?

Mr. Roy Well, you just have...under present law, you just have to get some other machines, Mr. Goldman, or provide for other methods of voting. That's presently the law, as I understand that. Now, Mr. Landry, Ambrose Landry, I think, has an amendment that says, "as provided by law" that he may come up with after that. The law is just like I've said it. Now, that's how it is right now. If you contend that the machine has been rigged, you have a right to have the machine examined.

Mr. De Blieux Mr. Roy, what would this section provide that the election code couldn't take care of?

Mr. Roy Well, Mr. De Blieux, I don't see how you missed what I first said. It provides that the election code may never say that you can have anything but secret balloting. That's number one. It provides that the election code may never say that you can have proxy voting; that's number two. It provides that the election code may never say that ballots may be counted in secrecy; that's number three.

Mr. De Blieux Well, couldn't the election code take care of all those things without the necessity of this in the constitution?

Mr. Roy Well, certainly, it could, but by the same token, it could say that we are going to have proxy voting, we're going to have open voting, and we're going to have ballots counted in secrecy. If that's what you want, then, vote against the section. It's very simple. Incidentally, every state law, every state constitution either provides and mandates the legislature to provide for secrecy of

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majority of them, or a great proportion, specifically say in the constitution that the ballot shall be secret. So, we're not alone in this.

Mr. Jenkins Mr. Roy, with regard to preserving the voting machines inviolate until election contests have been settled. The objection was raised about what about the second primary, etc., these court decisions have to be resolved before the next primary election anyway, don't they, in order for...you know whether that primary is going to have to be held? So, that doesn't cause any problem.

Mr. Roy That's correct, Mr. Jenkins. If they don't try to do it, a federal court will enjoin the election in any event.

Mr. Anzalone Mr. Roy, if the legislature, in its infinite wisdom, should decide that the only absentee voting that was going to occur would be those by people who are employed out of the state, or people who are in the service of their country, do you think it would be constitutional under the provision that you have here?

Mr. Roy I am not certain. Under state...under federal law it probably would be close; under state law it would be constitutional. Under our provision it would be constitutional because we leave it up to the legislature.

Mr. Poynter The first amendment that the huddle agreed to go with is Mr. Ambrose Landry's amendment.

Amendment No. 1. On page 1, line 25, immediately after the word "inviolate" and before the word "until" insert the words "as provided by law".

Explanation

Mr. Lanier Mr. Chairman and fellow delegates, I regret Mr. Ambrose Landry is not with us today. He had a death in his family, and he asked me to present this amendment on his behalf. He has prepared notes which I, with your forbearance, I'd like to read to you because this is the way he would have presented this amendment.

"In accordance with Revised Statute 18:1164 et seq., the Clerk of Court is the parish custodian of voting machines. One of his duties is to notify all candidates of the breaking of the seals on the voting machines. This is done on the third day after the election in the presence of the candidates and the chairman of the executive committee of the party, if a primary, or the president of the Board of Supervisors of Elections, if a general election. The Clerk opens each machine and certifies the tabulation of all votes cast for each candidate. Certified tabulations are used by the committee to certify the candidates. Thereafter, the absentee ballot, in all election returns are kept under lock and key by the Clerk, in case of an election contest. The article, as written, could be interpreted by the courts to mean that the voting machines should have to be preserved inviolate, thereby tying up the machines so that the machines could not be prepared, then, for the next election. This is not the intent of the article. It is the intent that on election day the machines be prepared for the entire process in our state. All this amendment does is to leave it up to the legislature of the ballot and election returns to the legislature."

I'll be happy to yield to questions. Mr. Chairman, I have no objection to this amendment.

Mr. Poynter Amendment No. 1 [by Mr. Roy] page 1, line 22, immediately after "Section 3, strike out the word "Voting" and insert in lieu thereof "In all elections by the people, voting and between lines 26 and 27, insert the following paragraph:

"In all elections by persons in a representative capacity, the vote shall be viva voce".

Explanation

Mr. Duval Mr. Chairman, and fellow delegates, I don't want to get anybody upset using a legal term, but it's a term of...a legal term of art like habeas corpus which has been well defined in the courts. Now, let me explain to you the reason for the amendment. This is language which is precisely the language in the present constitution. It has been interpreted by the Supreme Court and it's a...I think an essential provision in the constitution. If we're going to go this way because if, without this provision, school boards for instance, could elect their superintendents by...secret...in a secret fashion, and of course, public business like that should be conducted publicly. It...the public bodies have attempted to do this secretly before, and because of this provision, they haven't been able to do it. I think it's an essential provision. It's in the present constitution, and it just maintains the present law which I think is very good and has a lot of efficacy.

Questions

Mr. O'Neill Mr. Duval, did Mr. Anzalone put you

Mr. Duval Even though it has some ramifications, he did not.

Mr. Tapper Mr. Duval, you say that viva voce has a definite definition as set up by the courts. Would you give us that definition?

Mr. Duval The definition is that it will be an open vote. A voice vote rather than the Australian method, that is, a secret ballot.

Mr. Tapper Did you know that...that, also, applies to the House of Representatives where we vote by machine rather than by voice vote and it's been a bone of contention for many, many years that that may not be legal, the way it's being done in the House of Representatives and the Senate.

Mr. Roy No, sir, I don't think you're right. It's in the present constitution and I don't think anybody has ever seriously contended that. It means the vote is open, sir. Not necessarily vocal.

Mr. Poynter [unclear]

Mr. Roy [unclear]

Mr. Poynter [unclear] concerned about your amendment?

Mr. Roy [unclear] I don't think so.

Mr. Poynter [unclear] I don't think so.

Mr. Roy [unclear] I don't think so.

Mr. Poynter [unclear] I don't think so.

Mr. Roy [unclear] I don't think so.

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against the constitution. There are cases in the present constitution where when it wasn't practiced, the courts have said it had to be practiced. It means and the vote will be open. That's precisely what it means, and I think certainly public bodies should vote openly. That's what this means.

Mr. Arnette Stan, would you consider making a technical amendment and changing the language to English, and say an open public vote or something of this nature?

Mr. Duval Well, the reason I'd be reluctant to doing that is because this is a term notwithstanding what Mr. Tapper said that's in the present constitution. It has been interpreted by case law and why don't we change habeas corpus to free the body. It's been interpreted, we all know what it means. The law...the courts know what it means who have to interpret it. We don't have to interpret it.

Mr. Roy Stan, I didn't hear every comment, but for the benefit of everybody here, viva voce doesn't mean by voice vote, necessarily; it means a show of hands--just an open vote.

Mr. Duval Yes, sir. That's what it has been interpreted to mean. Right.

Mr. Roy There's no question about that is there?

Mr. Duval No question about it at all. Anywhere.

Mr. Velazquez Basically this prevents city council from meeting in a dark room somewhere and passing laws, is that correct?

Mr. Duval Thank you. Thank you. Yes, sir.

Mr. Velazquez Thank you.

Mr. Stagg Mr. Duval, wasn't one of the things that the delegates acknowledged was their intended purpose is that to write a new constitution which could be easily understood by every citizen without having to go to see his lawyer? Don't you agree, that such words as *voir dire*, *habeas corpus*, *ex post facto*, *ex officio*, *viva voce*, are words that can better be said in English for the understanding by the ordinary citizen? Do you further note, sir, that if you would change that *viva voce* to an open, public vote then I would most happily support your amendment?

Mr. Duval Mr. Stagg, I certainly don't mind doing that. It's just that this has been...if we do that to *ex post facto*; I think it's been interpreted over the years and the courts, who have to interpret this document know full well what it means. When we start changing the words then the courts may well change their interpretation. This is the basic reason for that. But,...open public vote...it says exactly...perhaps...

Mr. Stagg Then when you use the voting machine an open public vote will get away from *viva voce* meaning to vote by voice.

Mr. Premier Stanwood, do you know what *veritas* means?

Mr. Duval Yes, sir.

Mr. Langner Just one short comment, you do know that I had rather have it in French, sir.

Mr. Duval Well, I assume that's a question.

Mr. Singletary Stan, where is the...what's the citation for the language you are using in the constitution?

Mr. Duval Article VIII, Section 7, of the constitution says...I'm assuming from it "and all elections, by persons in a representative capacity, the vote shall be by *viva voce*." This is in our

present constitution. It's been interpreted by the courts. It's clear what it means. There's no... that the vote be open...

Further Discussion

Mr. Anzalone Mr. Duval, it is with a great deal of humility and with heartfelt thanks that I, as a pedigreed Italian, and representative of those similarly situated, rise to thank you for your attempt to put into this constitution words from that which is the true language of romance.

Further Discussion

Mr. Roy Ladies and gentlemen of the convention, as I can understand it, the committee has no real feeling about this, but I have a certain feeling I want to share with you. Then, I'm going to ask Mr. Duval maybe to withdraw his amendment and come back with it. Since it could be argued that we would be mandating secrecy in all voting, even with respect to elections of presidents, or police judges, and all that--and that's not what we intended---then I certainly would be for his first comment in that in all elections by the people voting shall be secret. I think that ought to be made pretty clear and we ought not to ever get away from that. So, if his amendment could be divided, I would have asked that it be divided, but Mr. Poynter tells me it can't. Then, with respect to *viva voce* voting in the different boards and police juries, and whatever have you, that have, I have no real strong feeling one way or the other. But, if we delete it, if we could divide it and delete No. 2 then it would be up to the legislature in its code to decide whether it was going to allow school boards to vote by a show of hands, *viva voce*, or to require secret voting, or not to say anything about it. All I'm saying is, that I think the first statement he makes is real good because it makes it very clear that in all public voting by the people, it has to be secret, whereas, in other areas we may provide for a *viva voce* voting. I just don't know how I would vote on a show of hands. So, I would like to ask Mr. Duval if he would consider withdrawing his amendment, resubmitting it, so that it could be divided on those two issues because I think, I think it's real important. I think some people have a definite feeling about No. 1; No. 2 is here or there; No. 3, they may be for or against it altogether.

Question

Mrs. Warren Mr. Roy, I really don't want to have to come up to that mike and talk this morning. I'm concerned about you saying...school boards not having open meetings. Now, I like school boards; I like children, and like all that thing; but I am not for any school board member being able to go and have any secret meetings. That's a lot of our problems in Orleans Parish and I don't even single it out, but I just think that this is good and it should be in there. I was just about to save time and not get up there and speak in favor of this amendment.

Mr. Roy Well, Mrs. Warren, I understand your position and I'll probably will vote that way, but there's some people in here who do think that you can---you should be able to have secret balloting or voting in those particular types of areas and all we're doing is, you're going to make them who would want to vote have the public secret ballot always secret. You may make them vote against Mr. Duval's really clarifying it because they're opposed to what you are for which is, open voting in school boards and what have you. That's all I'm saying.

Mrs. Warren Well, I'll talk at that time.

Further Discussion

Mr. Langner Mr. Chairman, fellow delegates, I have

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Amendment

Mr. Poynter Amendment No. 1 [by Mr. Avant]. On page 1, line 23, immediately after the word "voting" and before the period "." insert the following: "only by members of the armed forces of the United States and their spouses and children living with them".

Explanation

Mr. Avant Mr. Chairman, ladies and gentlemen of the convention, I'm not going to take a lot of time on this amendment. I think it's very obvious what it does, but if it's not, I'll tell you. It means that absentee voting will be limited to members of the armed forces of the United States and their spouses and children living with them. Now, I know that this makes a radical change in the law. I'm well aware of what it does and, of course, I've had people talk to me about this amendment and say do you realize that this would do an injustice to say a man who might be working offshore? Well, it does no more injustice to him than it would to an individual, who the day before the election happens to get into an automobile accident, and had his leg broke and was laying up in the hospital in traction, he wouldn't get to vote either. There is no law that the mind of man can devise or pass that is not going to have some rough edges on it. Now, that's impossible to draft any kind of law that's just going to be perfection. So, let me give you the other side of the coin and I'll give it to you very briefly. As you well know, most of the absentee voting is done by people, who election day choose to maybe go squirrel hunting or be off on vacation or somewhere else. I don't think that that is why we should have absentee voting. Let me ask you this simple question and then I'm going to close and sit down. Just sit back and think, over the past ten to fifteen years how many elections that you know of, that the machine vote was very close, very close, maybe fifty-one percent to forty-nine percent or fifty-three percent to forty-seven percent and then they open the absentee ballots and low and behold, the absentee ballots as opposed to the machine vote runs five, and six and seven and eight to one in favor of one candidate. Think about that. We can't write any kind of a perfect law, but we can do the best we can, and you do and you have to consider both sides and see which particular side of the coin you think is going to be in the public interest. I believe, that if we limit absentee voting to members of our armed forces and their immediate families who happen to be living with them, we will be doing a great thing for providing and insuring that we have honest elections in the future.

Questions

Mr. Lanier Mr. Avant, are you aware that in Lafourche Parish we have a lot of shrimpers and fishermen who go out for long periods of time in the Gulf?

Mr. Avant Oh, I know that Mr. Lanier.

Mr. Lanier Would...in effect wouldn't your amendment disenfranchise these people who are out there working for a living?

Mr. Avant No. It doesn't disenfranchise them. They can vote at the polls.

Mr. Lanier If they come in and hang around for election day.

Mr. Avant That's right. Mr. Lanier, as I said you cannot write a law that is not going to have some rough edges and it's not going to be perfect. You can't devise a perfect law. I can't, you can't, nobody can. But, you just think about those close elections and those very unclose absentee ballots and then you make up your mind which way you want to go. I've already made up in my mind the way I

want to go.

Mr. Lanier Another problem; are you aware of in my parish, is that we have a large offshore industry?

Mr. Avant I'm aware of all that, Mr. Lanier, you're not telling me anything new; we discussed this yesterday.

Ms. Zervigon Mr. Avant, isn't this a change from the work that we did earlier in the convention where by and large we've kept things more or less as they are and provided for orderly change by the legislature or other responsible bodies?

Mr. Avant Ms. Zervigon, I don't know that we have done that, but I will admit that this is a substantial change in the law, for what I consider to be a very good purpose.

Mr. Cowen Mr. Avant, do you think that this amendment will tend to make elections more honest?

Mr. Avant Yes, sir. I certainly do.

Mrs. Warren Mr. Avant, I'm...when your amendment came before and you started talking I thought about one thing. The Constitutional Convention is in session now, it's going to be elections all over the state. We're going to have one in the city of New Orleans on November 10th. Now, we might get bogged down here on that day which is on a Saturday. We might get bogged down and I won't be able to go home and vote and I won't be able to vote absentee so I think, I think that you're trying to cure one thing and...one I'll and you're going to make another one. What would you think...

Mr. Avant I'll put it this way Mrs. Warren. I'll be very blunt. I think that more wrongs are committed and have been committed by the absentee voting system as we now have it than would be committed or done if we adopted this amendment, and perhaps some people did not get a right to vote or did not get to vote when really they should have voted. Do you understand what I'm talking about? I just think that we've got to make up our mind and decide which is... in the public interest and go that way. Knowing full well that whatever we do it's going to have some rough edges somewhere.

Mrs. Warren I'm just sorry to disagree with you.

Mr. Tapper Jack, did you know that I agree with your theory; however, I'm afraid that a lot of it's been said because so many people are not going to be able to vote, like college students, like fishermen that was mentioned before, or oil field workers that work seven on and seven off, or ten on and five off. I just...I'm very leery about this. Don't you think we're going to disenfranchise a lot of voters?

Mr. Avant I don't think we're going to disenfranchise that many. Mr. Tapper, because I know in my own mind that the vast majority of the absentee ballots that are cast are not cast by people in that category. They're cast by people who just choose to be somewhere else doing something else on election day rather than going and exercise their right to vote.

Further Discussion

Mr. Roy Ladies and gentlemen of the convention, the committee opposes this amendment as a whole and I'll just say a couple of things, but list a bunch of people. Mr. Avant keeps talking about you're going to have rough edges whenever you deal with something that you're trying to correct. That's true, but why have the rough edges in the constitution? Why not let the legislature deal with this and if there are rough edges then the legislature from year to year can smooth them out. Once we've put something like this in the constitution and just disenfranchise a bunch of people there's hardly any way to get it out. Now, let me tell you how

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many people may be disenfranchised. People who maybe going to town a week or so before the election; can get a ride and go vote an absentee, but who know they will not be able to vote on election day. Of course, offshore workers, college students, people who know they are going into the hospital for surgery. People and businessmen who know they're going to be out of the state at a particular time who would want to vote. Russell Long, Gillis Long, Otto Passman, their wives, their staff, all those people will not allowed to vote an absentee; they'll have to come back into the state to vote. Ambassadors and people in the foreign service will not be allowed to vote. Can you imagine Louisiana one day may have an Ambassador to France and not be able to vote in elections in the state because he is not in the United States Army or something? There's just no end to the number of people who will be disenfranchised. So, I urge the defeat of this particular amendment. The just goals that it seeks to accomplish are far outweighed by the trouble it will cause.

Questions

Mr. [unclear] Yes, it is just as precise as the [unclear] right to [unclear]

Mr. Roy Yes, sir.

Mr. Goldman All right. Will you concede that the right to a fair trial if we use this same philosophy most anybody...we would have to think that anyone that's indicted by a grand jury the majority of them are...there's enough evidence to show that they're at least...there's enough guilt there to have a trial, why don't we just say that once the evidence is shown for a trial why aren't they automatically guilty? We're saying the same thing...aren't we saying the same thing about people voting that those that...most of them in one man's opinion who votes absentee only does that because he wants to go fishing. What research does he have to prove that?

Mr. Roy I don't think he has any and I think he ended up saying at the end that it's not the offshore workers, it's somebody else who wants to go hunting. I think that's not true.

Mr. Ullo Mr. Roy, would you agree that this amendment would take the right away from the aged? Many of these people just cannot stand in these long voting lines, especially with our voting machine system in this state, two or three hours. Many of these elderly vote a week or so ahead of time to prevent this. This would take the right away from many of these people. This is a very, very bad amendment.

Mr. Roy Not only that, but it would take the right away from the aged who are not able to vote at all. It would take the right away from the aged who are not able to vote at all. It would take the right away from the aged who are not able to vote at all.

Mr. Fontenot Mr. Roy, do you know I'm in complete agreement with Mr. Roy's amendment.

Mr. Roy Clyde, being that's the first time, I think [unclear]

Mr. [unclear] Yes, it is [unclear] that blind up there.

Mr. [unclear] that.

Mr. Fontenot O.K.

Mr. [unclear] Yes, it is [unclear] that blind up there.

Mr. Stagg Mr. Chairman and fellow delegates, Mr. Perez was here to describe this amendment he would say it's a bad, bad, bad amendment and it is. I urge the convention delegates to vote it down. But, in saying so in passing, I would like to point out to Mr. Roy and Dr. Ullo that the old and infirmed people are those who are going to be in the hospital if they are going to vote absentee they're going to violate the law because the absentee voting law says you have to make...to be out of the parish on election day and if you're within the parish on election day even if you are hospitalized you cannot vote an absentee. That's one of the abuses of the system which addresses itself to the legislature, not the constitution. Mr. Avant says you cannot pass laws that don't have rough edges. Well, if this isn't a law with a rough edge and you're being asked to pass it then I don't believe I just don't know what the term means. The participation elections in this state is very poor at this point. Mr. Avant's amendment guarantees that there will be much, much more poorer turnouts in the future. It's a bad amendment and I hope that it's voted down. In order to conserve the convention's time, Mr. Chairman, I will not yield to questions.

Mr. Avant The only thing I want to be sure honest elections and I say that with the voting machine law we have in this state it's most impossible to steal votes, but when votes stolen, the absentee ballot method is the way done.

Questions

Mr. Dick Jack, this is not an unfriendly question but I think it needs to be brought to the attention of the convention, and that is that your amendment and indeed, everything we're doing here in this article has to be submitted to the United States Department of Justice under Civil Rights Act of 1964.

Mr. Avant That's correct.

Mr. Alexander Mr. Avant, would not this amendment cure some evils in elections where I know in a parish or municipality or where there were about twelve hundred registered voters and over five hundred voted an absentee would that not cure that...

Mr. Avant That's what we're talking about.

Mr. [unclear] Yes, it is [unclear] in this state through the Clerk of Court's office.

Mr. Avant Mr. Duro, I don't have any objection to as Reverend Alexander pointed out, where there are registered voters of approximately 1,000 and over five hundred registered voters and over five hundred voted an absentee would that not cure that...

Mr. [unclear] Yes, it is [unclear] in this state through the Clerk of Court's office.

Mr. [unclear] Yes, it is [unclear] in this state through the Clerk of Court's office.

[Amendment rejected: 21-15. Motion to reconsider tabled.]

Amendment

Mr. Poynter Mr. Sandoz, did you still want your amendments, sir?

Amendment No. 1. On page 1, delete lines 21 through 26, both inclusive, in their entirety. We're going to have to add some language. On page 1, delete lines 21 through 26 both inclusive, in their entirety, including all floor amendments thereto.

Mr. Sandoz's intent is not to knock out the language added between lines 26 and 27. All right. Never mind, he's going to knock it out so, it's going to read as follows: on page 1, delete lines 21 through 26 both inclusive, in their entirety and between lines 26 and 27 delete the language added by the Duval amendment. So, it would have the effect of deleting the entire section including deleting the language added by the Duval amendment. I'll make that correction on the official copies, Mr. Sandoz.

Explanation

Mr. Sandoz Mr. Acting Chairman and fellow delegates, at the outset, I would like to say that as far as the Duval amendment, I have no objection to that, however, I think it's out of place at this point. My amendment is very simple; it deletes this section. I have no aversion to any of the provisions of the section, that is, the right to secret ballot, the prohibition of proxy voting, and the fact that the returns of ballots shall be preserved. However, I want to call to your attention the fact that we have now approved the Landry amendment still leaves the matter up to the legislature. My philosophy in offering this amendment is simply this; that with the adoption of the Gravel amendment this morning, where we have authorized the legislature to amend the election code, we have provided in that the legislature shall provide for the permanent registration of voters. We have specified that they shall make provisions for the conduct of all elections, and we are also provided that the right to vote in these elections is guaranteed to all citizens of the state. My point is that this section, as well as the numerous other sections in this proposal are unnecessary. I am of the opinion that the legislature...that we should have confidence in the legislature that in adopting the election code that's provided for by Mr. Gravel's amendment, that they will include in that the same provisions, or essentially the same provisions that are incorporated in this section. Now, I know that Mr. Roy and the members of the committee will oppose this amendment which deletes this section. My point is this, it's just a different philosophy that we have. I believe that the best way to leave this is in the hands of the legislature. I think that in the event that some change needs to be made, that the legislature would be better able to change it rather than to freeze it in at this particular point, and without laboring the point, that's my philosophy on this. We just don't need it in view of the Gravel amendment.

Further Discussion

Mr. Roy Ladies and gentlemen of the convention, the committee, of course, is against this amendment, and of course, it brings everything right to the front now. You're either going to constitutionalize the basic prohibitions that we have tried to set forth or you're not. You're going to leave it up to the legislature...I need not remind you that, you know, sometimes the legislature goes off on a tangent. It did so several years ago when after a new election law came into being, thousands of people were purged in the name of not meeting the requirements. Now, the other thing is that, I think Mr. Sandoz misinformed you when he said that the...with the Landry amendment...leaves everything up to the legislature anyway. That's not correct.

The Landry amendment followed the preservation of the ballots with respect to contests for elections, and doesn't have anything to do with voting by secret ballot, and what have you, which you've already voted for. Remember that the Landry amendment came in section...in the second sentence of Section No. 3, and we felt that that was correct and it should be that way because people of the legislature should provide some method even though we thought it was covered by the amendment--by the section--we still went along with it because we felt that it specifically clarified that, so don't be misled into thinking that we've given everything over to the legislature. We have not allowed the legislature to deny secret voting nor to allow proxy voting, as was suggested. I'll yield to any questions.

Further Discussion

Mr. Warren Mr. Acting Chairman and delegates, I'm back again! The very thing that I was so interested in and was so glad that we were going to get in this constitution was to see that our school board meetings would be open, and we would know how our representatives would vote. I'm going over this thing again. It could have been left to each delegate in this convention to send a copy to the school board if they had wanted to, but the information was here for them to get and they had a right and an opportunity to tell us what they would like for us to do. If this is taken away from us now, we won't even have a chance to ask them, or try to insist that they give us this right of representing us fairly, so I'm going to ask you to vote against this amendment, and let us keep Mr. Duval's amendment in here. Thank you very much.

Further Discussion

Mr. Jenkins Mr. Chairman, this proposal has been submitted to public hearings on repeated occasions. The office of the secretary of state has rebutted the director of the board of registration of the state. The League of Women Voters and other organizations have gone over this proposal; they think it provides the basic protection that we need in our electoral process. You know, we can draft a beautiful constitution. We can grant in the Bill of Rights, the appropriate rights that people ought to have. We can set up a sound structure of government, but if we don't have an election process that is fair, and that works, and that is inviolate, we can say good-bye to all those other things, because we'll have men in office that will ignore them and that will flout them. We have taken the election law that was in our State Constitution and boiled it down to a bare minimum. This is about as bare and basic as you can get, but under no circumstances would we ever want the legislature doing away with the secret ballot, or allowing proxy voting, or saying that ballots cannot be publicly counted. All those are in the present law now; there's no change. We've allowed more discretion for the legislature in the absence of which we've allowed the legislature to provide in more detail about preservation of ballots. We just can't eliminate things like this from this constitution, and have a constitution. The purpose of a constitution is to provide certain permanent protections that cannot be done away with by the legislature, or by the executive, or by the judiciary, and that's all we've done here. Certain fundamentals, certain basics...we just can't do without these basics, so I urge the rejection of this amendment.

Chairman Henry in the Chair

Amendment

Mr. Poynter Delegate Gravel has an amendment, and it's just now being distributed.

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I have inserted the word "and" to insert a period "." and delete the remainder of the line, and delete line 26 in its entirety.

Now, I've inserted the language for clarity the desk copies...and delete the remainder of line meaning line 25, including all Convention Floor Amendments thereto, which is for clarity, and delete line 26 in its entirety.

Explanation

As a consequence of adopting Mr. Landry's proposed amendment that was handled by Mr. Lanier, saying that the ballots would be preserved inviolate, and I think "as provided by law" or something to that effect, you've made this completely unnecessary in the constitution. So this then, can and should be considered...this language can and should be considered by the election code. That's, in effect, what you've already said by adopting the amendment that Mr. Lanier presented on behalf of Mr. Landry. This language is unnecessary in view of that amendment, and I urge the adoption of this amendment which simply takes out of this provision, that particular language that now has already been relegated to the statutory area. I move the adoption of the amendment, Mr. Chairman.

Further Discussion

Mr. Jenkins Mr. Chairman, I certainly wish we had been as brief in some of the previous articles as some people would like to have us be here. We have a provision that says something when we say "the ballots shall be preserved inviolate as provided by law until any election contests have been settled." That says something! That says the legislature cannot pass a law which requires or permits the destruction of the ballots right after the election. If the legislature, when it makes such provisions, does that, the courts will rule it unconstitutional. But, this one clause as written now, and as amended by Mr. Landry, is the only protection we have against such a law. If you have no way of verifying election results other than the tally originally developed, you don't have any real way to check the validity of those results. Absentee ballots should be preserved inviolate. The machines, insofar as possible, should be preserved inviolate. Why we have it written saying now that "all ballots shall be preserved inviolate as provided by law until any election contests have been resolved," prevents the legislature from doing something which will allow the destruction of those ballots. Certainly, they can have specific rules regarding it, but they can't allow their destruction. Now, that's important; that's important to the sanctity of our election process, and certainly Mr. Gravel's amendment is not well taken at this point, so I urge the rejection of it.

Questions

Mr. Poy Mr. Jenkins, do you realize that if Mr. Gravel's amendment passes, that we're back to the old situation where you have a right without a remedy? If the legislature says that all election contests must be disposed of in five days, then it won't make any difference anyway if there is a valid contest. They'll destroy the ballots after five days, and even if the election was stolen from you and everybody knew it, there would be nothing that those ballots will be preserved until the election contest is over. Do you realize that?

Mr. Jenkins I think you're right, Mr. Roy.

Mr. Roy Mr. Chairman, I think it's important that the legislature, when it passes laws regarding election contests, should be very clear in its language. I think it's important that the legislature, when it passes laws regarding election contests, should be very clear in its language. I think it's important that the legislature, when it passes laws regarding election contests, should be very clear in its language.

held up, and we're just making...throwing the ball back to the federal boys instead of us keeping it in our own courts?

Mr. Jenkins Yes, sir.

Mr. DeBlieux Mr. Jenkins, under the provision as presently written with Mr. Landry's amendment, wouldn't the legislature have the right to set those rules anyway?

Mr. Jenkins Yes, sir, Senator, they can set the rule, but they can't do anything that would allow the destruction--the immediate destruction--of ballots before election contests have been settled. They can only regulate that. They can have rules regarding it, but they've got to have a system that does preserve the ballots inviolate. That's the mandate here, and if the legislature didn't do that, the court's could enforce it anyway.

Mr. DeBlieux Well, what I'm thinking about is that preserving this is, isn't it possible that the...if there is an election contest in the first primary, you might tie them up and not be able to use the machines over a certain period of time. If the legislature is going to provide the rules, they can do it and set the rules which would be reasonable anyway, couldn't they do that?

Mr. Jenkins No, Senator, as you know, right now, we have summary proceedings that require election questions to be resolved in forty-eight hours in many cases. We're going to continue to have that, and by saying "as provided by law," we give the legislature leeway to provide for things like that. But, without this section on the legislature could come along and pass a law saying the ballots would be immediately destroyed without this, but we'd prohibit that with this language.

Mr. DeBlieux I think that if the legislature is going to provide it, don't you think the legislature is going to provide the rules? Well, then, it is necessary to have this particular provision in it?

Mr. Jenkins No, because the legislature, for example, might be completely silent. In such case, this provision would give us some protection because we know that they would have to be preserved inviolate in some way.

Mr. O'Neill Mr. Jenkins, do you remember Senator DeBlieux's contest for the delegate seat that he is now in, and do you remember that it was a very close vote, and that the machines in the ultimate end, were what resolved his contest for this seat that he is now in?

Mr. Jenkins That's correct, Mr. O'Neill. I think Senator DeBlieux should be in favor of such a provision as we have now. Let me say in addition, I don't know how many delegates here have read our present election law in our constitution, but I hope over this weekend, those who haven't will take the opportunity to. We have in this election section, taken out some protection that the people have in their election process, and I oppose many of those efforts. I think what we have now goes down to the bare bones, and when I see more efforts to take out even more protections, I really get worried. If anything, people should be proposing that we include some more protections in this article, not out what few we have. We need everyone we can get to have sacred elections, and elections that are going to be preserved inviolate.

stitution, could possibly help solve problems rather than, on the contrary, create them. Let me just suppose that in a first primary election there was a contest between the candidates for governor, and as a consequence of the contest, one of the candidates demanded a statewide recount. That means something, I suppose, to the committee--it means very little to me--and to them they want, and under this language they would almost require--they would require--that all those voting machines would remain in tact and inviolate--whatever that particular word means in relation to voting machines--until any election contests have been settled, until the processes of the state and federal courts, even, had been concluded. Now, what's going to happen to your second primary, if there is one? Or what's going to happen to your general election if there's no second primary? Ladies and gentlemen of this convention, this language now, as a consequence of the Landry amendment, is meaningless because it simply says that "as provided by law, ballots shall be preserved inviolate until any election contest has been settled." So that leaves it up to the legislature to implement this; it's not self-executing or self-operative. All I'm saying in this regard is that we do not need this language. It is cluttering up this section, and clutters up the article. There's nothing here about when an election contest has to be had, how long it's going to take to conclude it. As a matter of fact, there are two words in this particular part of this sentence that really should cause all, constitutionally, some serious concerns. One of those words is "inviolable" and the other one is "settled." I don't think this means much. Now, I don't think there's any doubt but that if we adopt, and we're certainly going to do it, if this constitution authorizes it and the constitution passes, an election code, but that we're going to adequately provide for the preservation of ballots and voting machines in order to properly determine election contests. I urge, ladies and gentlemen, that you support this amendment, and that we delete this provision because it's totally unnecessary. In addition to that, it really creates problems that perhaps it is intended to solve, and just doesn't solve it. That's all I have to say on it.

Question

Mr. Jenkins Mr. Gravel, isn't it true, that right now, that if a person appeals an election outcome, which he can do only within a very limited period of two or three days after the election, that in fact, a recount will be ordered right now under present law, and all the machines may have to be looked at again, and so forth, and that this provision simply maintains that present situation? Isn't it also true that...

Mr. Gravel Just a second, I want to answer you one at a time. That particular provision has efficacy in meaning in very, very few cases for the simple reason that a great majority of the cases are not settled or determined in any way whatsoever, but are dismissed by the courts as being moot because the time has expired, or the time within which the secretary of state has to print the ballots and distribute the ballots, has arisen. Those are the kind of problems, Mr. Jenkins, that have got to be considered in their totality in the election code. You very seldom settle or conclude--now hear me well, settle or conclude--an election contest under present law. That's one of the big problems that we have now. The courts just are not finally determining. All I'm saying is that in an election code, this entire process has to be treated fully and comprehensively, and not touched on lightly, and I think, very inadequately ...

[Amendment under consideration. Amendment reported.]
 Mr. Jenkins Mr. Gravel, isn't it true, that right now, that if a person appeals an election outcome, which he can do only within a very limited period of two or three days after the election, that in fact, a recount will be ordered right now under present law, and all the machines may have to be looked at again, and so forth, and that this provision simply maintains that present situation? Isn't it also true that...

Pleading of the Section

Mr. Poynter "Section 4. Residence of Electors
 Section 4. No elector shall lose a bona fide residence by temporary absence due to any employment, including military service, or while studying or visiting away from his voting district."

Explanation

Mr. Roy Ladies and gentlemen of the convention, before you get all upset about the use of the word "residence" let me tell you why we had to use it. We had a lot of input from Mr. Waller who is with the secretary of state's office...like I said, Mr. Ambroise Landry sat in a lot of our meetings...there were other people, there was the League of Women Voters as well as Mr. Russell Gaspard who is with the Board of Registration, and was once a registrar. The present federal law and federal jurisprudence is that any person who arrives in a particular place can step off of the bus--now let me say you may not agree with it, and that's why I want to explain it, because we can't control that particular matter--but, anyone of us here who's in Baton Rouge may go down to the registrar's office and register to vote in Baton Rouge because all that is required now, under federal jurisprudence and federal legislation, is residency requirement with respect to voting. Now, you cannot vote, though, unless you've been there thirty days and the federal law has allowed for some type of administrative procedure whereby you are in the process of registering at least thirty days ahead of time before you can vote. But, that has nothing to do with the fact that you may still have a domicile, which is a legal word which means that you live in Alexandria like I do, and have the intention of making that your home. Now, what would be the practical effect of the matter is that I have the absolute right to go down here and register in Baton Rouge--East Baton Rouge Parish--because I'm a resident here, I've got an apartment here, and I'm here more time than I am in Alexandria, as a matter of fact, right now. If I choose to, and if I'm here for thirty days, I may then vote here in East Baton Rouge Parish. There's nothing we can do about that. Now, the fact of the matter is that, though, I lose my right to vote there in Rapides Parish, unless after I vote here, I go back to Rapides and reregister over there. So you see, you can be registered in two places, as a matter of fact, but you may vote in only one which is the last place where you registered to vote. Now, we simply provide here that, and this is taken to a great extent from the present constitution, that the fact that you are temporarily out of the state or out of your area, due to employment, including military service, and that would amount to employment with the United States government. You may be an offshore worker working in the North Sea at this particular time, or while studying or visiting to where you don't lose that residency, so that the legislature may not pass a law in the future that says if you're not at home all the time, or if you're not a domiciliary of a certain place you may not...you lose your residency. Now, as much as you may disagree with the idea that the federal government has stepped in here, there's not too much you can do about it, and as Mr. Vick pointed out, all this will have to go to the United States for approval in the end, in any event. That's simply what we provide for, and if you have any questions, I'll be happy to answer them. It's Article VIII, Section 11, of the present constitution.

Question

Mr. Lanier Mr. Roy, would you agree that if this is controlled by a federal law and there is nothing we can do about it, we really don't need this anyway?

Mr. Roy Well, Mr. Lanier, that same argument can be made with respect to a lot of things that we've done in this constitution. I feel I'm of the

law, in their constitution, a similar provision. If I could have your attention for just a moment, I think I might clear up some of these questions that have been raised. Virtually every state has a similar provision. Now, let me give you some examples. The state of Colorado has Section 4 of their constitution's Article VII on Suffrage and Elections says "for the purpose of voting an eligibility to office, no person shall be deemed to have gained a residence by reason of his presence, or to have lost it by reason of his absence," and so forth, and spells out the particulars. Look at the state of Nevada. "For the purpose of voting, no person shall be deemed to have gained or lost a residence," and so forth. State of California... "for the purpose of voting, no person shall be deemed to have gained or lost a residence," so forth. State of Louisiana... the same thing. Now, there's no way this provision can be ruled unconstitutional by the justice department because it doesn't deny anyone the right to vote. What it does is, it grants certain people the right to vote; it protects the right to vote in certain instances. It specifically protects the right to vote when you're temporarily absent for certain reasons. Now, the legislature can come along and say "Well, there are other reasons, there are other ways that we want to protect people's right to vote." If they're temporarily absent because of illness from the state, the legislature could protect that. The legislature can extend the franchise to other people, but the legislature here could not take away the franchise. Now, here's why it's so important. It's important because of political vendettas, primarily, and that the primary reason why it's been included in all of these other state constitutions. It's an attempt to prevent the case that might arise when you have someone who is away at school, away in the armed forces, away on business, and then sort of legislature, knowing that in... having that in his mind, the fact that that's his primary opponent, manages to pass a bill through the legislature which says that someone must have continuously resided in the district for a certain period of time. We have many instances of people being elected to office who were in the military, elected to office in this state... not even in the country instances where they were in school and not residing in their district. If we don't have such a provision in this constitution, the legislature could, because of some legislator's vendetta an attempt to exclude someone from running for office, come along and pass a bill which would preclude such a person from running for office; so the attempt here is not to exclude anyone from running for office or voting. It is to specifically say that some people are protected in their right to vote even though they may be temporarily absent. It's not an attempt to conform to federal law particularly. It's obviously within the purview of federal law. What we're doing is protecting against certain actions by the legislature which might be detrimental to the right to vote and hold office of some of our citizens, so that's why we need it in here. It is important. Other states have recognized that importance, and we need to defeat this amendment.

Further Discussion

Mr. Burson. Mr. Chairman, ladies and gentlemen, I rise in support of Mr. Sandoz's amendment for two brief reasons.

First of all, we already have set out that the legislature has to write a comprehensive election code, that that code has to guarantee important rights such as permanent registration. We've guaranteed the right to secret ballot, etc. There is very little else, in my view, in this article that could not more properly be addressed by the legislature than it can by a constitutional convention. Stop and consider well, if you will, that fears about the legislature running away with some important voting right, are groundless for two reasons. First of all, Senator Rayburn said this morning, "They must think we are going to open Jackson and

let the population there come to run the legislature. We are not going to pass an election code which does away with the secret ballot, or with commissioners, etc." Well, I have to agree with that. That makes sense.

Secondly, the justice department will have to review under the Civil Rights Act, the Voting Rights Act, anything the state legislature does. It's hard for me to see how, then, the state legislature could run rampant, doing away with important voting rights or election rights.

Finally, if we make a mistake in our deliberations here and adopt even two or three sections in a lengthy elections article that do not pass muster by the justice department, we're in a heck of a fix. How do we then change it after the constitutional convention has adjourned sine die? We can't, as I see it. So we'd then have to go to the voters in Louisiana and ask them to approve sections of an election article that the justice department has already ruled are unconstitutional in light of the U.S. Constitution, which is sort of an absurd circumstance to me.

So I, generally, in sympathy with the view, that with a few possible exceptions--and I am going to look at each section as it comes up--but certainly with regard to this section and residence requirements. This is a field that the Federal Government has preempted, and we do not need that in our state constitution. It should be covered properly by the legislature in an election code.

Questions

Mr. J. Jackson. Mr. Burson, in Mr. Jenkins' remarks, he mentioned the names of several states that have very similar provisions. Would you care to comment on that in light of your remarks about the justice department? Because if his remarks are true, and I take it to be true, then it would mean that the precedent has already been set and that the justice department has not found any particular ruling... or any unfavorable... given any unfavorable ruling as it relates to the states that he named. So, I don't... how... would you care to comment on that?

Mr. Burson. Johnny, I don't know. I haven't done the research on that, but I cannot... I'm talking about the Louisiana State Legislature. I cannot believe that the Louisiana State Legislature would make an election code residence requirement more restrictive, for instance, than the section that's been proposed to us today. I don't know why they'd want to. As far as other states, I don't know. There are two explanations that suggest themselves. First of all, I don't know how up-to-date the research is, because we have to remember that the Voting Rights Act is a rather recent piece of legislation, comparatively speaking. It's been in effect now, I believe, since 1965, so it's very possible you could have had something within the last decade that would not have had to pass muster yet under the Voting Rights Act because nobody had complained about it.

Mr. Kean. Mr. Burson, in all of the references that Mr. Jenkins made to other constitutions, and in the reference he made to Article VIII, Section 11 of the Louisiana Constitution, it said that these temporary absences not only didn't lose the bona fide residence, but they would not have gained a residence by reason of them. That language is not in this section. Do you know any reason why not?

Mr. Burson. No, sir, and I imagine the reason why it's not is that that would probably be in conflict with the federal position on the question, which really renders this whole thing sort of irrelevant.

Mr. Willis. Mr. Burson, recalling the exodus of the days of The Grapes of Wrath where people would remove themselves and go to California not knowing whether they were coming back or not, and contemplating simultaneously the fact that don't like it

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residence plus intent--Now, assume, for the pur-
ten thousand people...some one thousand people
would go to California with no intent of staying,
but no intent of coming back.

Now, then, use this independent clause, the last one in this section—"visiting away from his voting district," so that a thousand people in California, with no intent to come back or stay, maintain their permanent residency here. They've got to be given absentee voting rights and they can control an elec-

Mr. Burson. Mr. Willis, in my old hometown--which has a population, I think, now, of about seventeen hundred and fifty people according to the census--there are still fourteen hundred people registered to vote. I think that's because a lot of them have been living in Lake Charles for the last twenty years. I think that if there's anything that will impinge upon fair elections in the community, it's that kind of thing, for whatever it's worth.

Reading of the Section

Mr. Poynter "Section 5. Political Activities
Section 5. No law shall deny the right of each person to organize, join, support, or oppose any political party or organization or to support or oppose any candidate or proposition, except as otherwise provided in this constitution."

Exploration

Mr. Jenkins: Mr. Chairman, this outlines a most important political right that our citizens have, that has to be considered and dealt with when we talk about election law. Naturally, there is a provision in here that says "except as otherwise provided in this constitution". That is specifically meant to refer to Civil Service or other provisions that we might place in the constitution limiting the right of individual citizens to engage in certain political activities.

It is meant specifically, though, to do a number of things. For one thing, it is meant to insure the right of our citizens to join organizations in order to express their own political views, by denying the existence of any law which would prohibit them from joining such an organization. It is meant to allow people to affiliate themselves with any political party they may desire, or at least to forbid any law which would prohibit them from doing so.

We have a situation that arose as a result of the presidential election last year where a large number of people in this state really lost their party affiliation: those are the members of the American Party. Because their candidate did not receive five percent of the vote in the election, they no longer are officially listed as members of the American Party. They have only the right to designate themselves as members of No Party, or Independent. People who wish to affiliate themselves with other minor parties are also denied that right. I have personal knowledge of this, because some of my constituents have attempted to do so. They have been denied that right, and they have been denied that opportunity. I think it is clearly meant to protect the rights of certain endangered groups, for example, teachers. Without such a provision, the legislature could come along, pass

litical activities, could not run for office, could not support or oppose a candidate for office, could not express their political opinions. The legis-

unclassified employees could not do that. We need a basic protection in our constitution for the

of assembly alone does not do it. Freedom of as-
sembly alone does not do it. We need this basic
protection except as this constitution denies spe-
cifically that right to any group in our society.

Political activity is too important, too precious, to the preservation of the interest of the individual citizens and the groups that represent them for there to be any chance that it would be denied. So, I urge the adoption of this section.

Mr. Burson Mr. Jenkins, would you agree with me that the Communist Party has, as the major plank in its platform, the overthrow of the government of these United States by violence or any other means?

Mr. [redacted] Wel [redacted] that familiar with [redacted]

Mr. Burson Well, then, would this section which guarantees to every citizen in the State of Louisiana the right to support that political party, include then, the active participation in and furtherance of that objective of the American Communist Party?

Mr. Jenkins No, I don't think it would. Mr. Burson Not to the extent that their rights to advocate a particular position and join a particular party are not already protected. They can, well, let me answer that question, Mr. Burson. If you or I or anyone else join that party, join that organization, we have every right to do. This simply insures the right of every person--we're not particularly trying to help the communists here, let me assure you--but those people, just like every unpopulated area, have the right to join a party, to have a purpose, an organization that they choose.

Mr. Buzbee: I'm not talking about join-although
a) I'd like to state that I'm one of those that
believes that the rights of any party or other group
that is dedicated to the violent overthrow of our
government should and must be circumscribed. But,
I'm talking about when you say "support and organ-
ize that political party", and you say "any," and
you don't qualify the "any." As you no doubt
know, you say "support" thereby legitimizing in the
State of Louisiana, support of such objectives and
aims of that party?

Mr. Jenkins No, let me state unequivocally, that the words here "to support any party" does not give any person carte blanche to go around doing... trying to overthrow the government of the United States or the State of Louisiana. It is... we are discussing here traditional political activity, not force or arms. In any case, it is that... that... any... any... won't affect the validity of any of our criminal laws which protect life or property.

section says that nearly explicitly enough.

Mr. Jenkins. Well, if you have an amendment, Mr. Burton, that would attempt to improve it, certainly we would be glad to discuss it. But I think we have to interpret words in their normal meaning. When we say support a political party, I certainly

Dr. A. K. Sengupta, the author of the book, has been a member of the Planning Commission of India since 1950. He is a leading authority on the subject of economic development in India. The book is a critical study of the Indian economy, and is a valuable contribution to the literature of the subject. It is a must-read for all those who are interested in the economic development of India.

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that...that thing, sir. But I think one of the things it would accomplish, it certainly would allow people to join parties of their choice. By "join", that simply means to go to the registrar's office and say, "Put me down as such and such a party," whereas that right has been denied people as present; they are denied the right, in this specific case, to affiliate themselves with the American Party; that's the most current example.

Mr. Alexander Of course, I'm concerned about the stipulation that a party must receive, I think, ten percent or twenty percent of the vote...or five percent, or it will not exist any longer.

Mr. Jenkins This won't deal with that from the standpoint of ballot position; but certainly it would mean that regardless of what percentage a party got, a person could affiliate himself with that party. That's the point that I think the section would make.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Sandoz]. On page 1, delete line 32 in its entirety, and on page 2, delete lines 1 through 5, both inclusive in their entirety.

Explanation

Mr. Derbes Ladies and gentlemen, I'd like to call to your attention the fact that the amendment that's currently before you is the Sandoz amendment and doesn't have my name on it, but Mr. Sandoz has asked me to handle it. I am in support of it and I'd like to add my name to it as a coauthor.

The effect of the amendment is to delete what is Section 5 in the present committee proposal. Let me say this to you, I believe like all well-intentioned people, perhaps the way it should be, that the committee's reach in this particular instance has exceeded its grasp. The problem is basically one of draftsmanship, and the problem is one of providing for exceptions to a basic rule. Now if you read the section, it seems to have a great ring of truth to it. Listen to it. It says, "No law shall deny the right of each person to organize, join, support or oppose any political party organization, or to support or oppose any candidate or proposition except as otherwise provided in this constitution." Now that sounds real good. But let me explain to you what I, as an attorney and as a person who has considered this section, believe to be some of the faults of the section.

First of all, I think basically, one's right to organize oneself and to express one's political beliefs through political activities is a right protected by freedom of speech, both in the American Con...the United States Constitution and in the constitution of this state presently...which is presently the law and which we have proposed.

Secondly, I feel that the way the committee proposal is presently worded, it has the effect of denying to the legislature the right to regulate campaign practices and contributions and activities of legal entities, both individuals and corporations. We have several, what I regard, as worthwhile laws on the books in this state which provide that campaign contributions by corporations are prohibited and in some cases, campaign activities by corporations are prohibited. To my mind, the word "person" means not only individuals, but also corporations. That's the first problem. Secondly, as I am sure you are all aware, there are a great number of current critics--and I think very worthy critics--of campaign practices and campaign activities in this country, and the efforts which have surfaced, I think, as a result of the Watergate investigation. What we are doing, it seems to me in this section, is we are prohibiting the legislature from enacting reasonable laws regulating campaign contributions and campaign activities of both individuals and corporations. I think that such laws and such regulations as may be enacted by the legislature can be very salutary and very

helpful to the political process.

So, I suggest to you that in this particular area there are so many exceptions, and proper exceptions, to the general rule which we have... which we enunciate in the section--exceptions which cannot be conveniently and effectively provided for in this constitution--that the only way to properly handle the exceptions is to leave it up to the legislature. And when you agree, based on, I believe, this argument that such exceptions should be left up to the legislature, it follows very logically from that point, that the whole area should be left up to the legislature and I believe that indeed it should be left up to the legislature.

So, I urge you to support the Sandoz amendment. I urge you to delete from the committee proposal the language which forms Section 5.

Questions

Mr. Kean Mr. Derbes, as I understand it...do I understand your explanation correctly that a "person" is broader than an "individual"...

Mr. Derbes That's correct.

Mr. Kean Under this section, corporations would be constitutionally authorized to expend funds to support political parties and candidates?

Mr. Derbes I think your question is a very good one, Mr. Kean. Essentially, we have present laws on the books in Louisiana which prohibit certain types of corporations from engaging in certain types of political activities, accumulating funds therefor, and the like. I think "person", as the committee proposal is currently phrased, is broad enough that it would include corporations.

Mr. Willis Mr. Derbes, because your argument charms me, to make what first appeared to be a kitten to be as big as Mike, the tiger, would it please you, sir, to request the opening of machine so that I could join in this amendment and that would put an end to it all.

Mr. Derbes It would please me, Mr. Willis, if you would do that.

Mr. Willis I would give you the advantage since you have the mike.

Mr. Derbes Well, if there are no speakers, I would simply move the previous question.

Mr. Willis That is as effective.

Mr. Vick Are you going to introduce your amendment?

Mr. Derbes If the Sandoz amendment fails, then I would introduce my amendment which is on the desk and bears my name. But I am rising in support of the Sandoz amendment, because I...for the reasons already stated.

Mr. Vick Why did you offer this one then?

Mr. Derbes I offered it merely in anticipation of a possibility that the Sandoz amendment might fail.

Mr. Vick Well, wouldn't this...wouldn't you be satisfied with this as an adequate substitute for Section 5 as written?

Mr. Derbes I could live with it, but I would prefer the Sandoz amendment. I could live with my amendment, sure.

Mr. Vick Well, the Sandoz amendment is to delete the...

Mr. Derbes That's correct.
Unless there are other speakers, Mr. Chairman.

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or the Black Panthers, or the Black Muslims, or the American Party, or the John Birch Society, or somebody. We are afraid to let them discuss, afraid to let them organize, maybe because we don't have the courage of our convictions, or we're too apathetic to get organized or something; I don't know what. Now, if there're technical objections to this section, let's offer amendments to change it. If we want to change "right of each person" to "right of the individual citizen" so that it doesn't extend this right particularly to corporations, I don't have any objection to that. That's not the point we're getting at anyway. We're trying to give constitutional protection to basic political freedoms; the rights to organize in groups for political purpose; to organize in parties for political purpose; to express your ideas and engage in political activities; to support your candidates, to support your propositions or to oppose them. If we don't, we have no protection in this constitution for a lot of groups, such as teachers, for one, who can be denied their basic rights by a mere statute without such protection. Now we've seen in the past how various groups were persecuted because their ideas were unpopular, because they had only tiny minority support. Mrs. Zervigon, this is not in the present constitution and I didn't say it was. I think if more people would read the present constitution and read the election article, we'd probably have fewer problems in our discussion of the election provision that we've proposed. If some people would look into the election laws of other states and see how they do it there, they'll find that all the things proposed here aren't so strange and unusual.

Did you know, for instance, in the state of South Dakota they don't have registration of voters at all? In most states, a majority of the states, you don't have registration by parties. I think over this weekend, one of the best things that we could do would be to read our own constitutional election law and get a couple of other constitutions and see how they do it in other states. But this section is one thing we need greatly, to protect the basic political freedoms of all the citizens of this state. Offer some amendments if you're not pleased with the particulars of it, but let's have a provision of this nature in this constitution.

[Amendment to Section 1, Article II, Louisiana Constitution, 1973, 59-29. Motion to reconsider tabled. Motion for introduction for subsequent consideration without objection.]

Announcements [Continued]

Personal Privilege

Mr. Schmitt Before we leave today, I think that we should take into consideration that there are other alternatives besides the assessors' plan. I've offered certain amendments which are being presently prepared by the staff, which would do the following: No. 1, take the state out of the property tax business. No. 2, establish classifications of property in the State of Louisiana, namely, residential, commercial, industrial, agricultural and all other property. It would also require use value for agricultural, horticultural, and timber lands in order to give these people certain types of benefits. It would also establish a review system in certain other systems so that people could complain about their property or other classes of property when they feel aggrieved. It would also leave with the assessor his job, that is the responsibility to assess property. The assessor would have the responsibility under this plan of establishing percentages of the fair market value for each class of property, and also establishing what the fair market value is and assessing the value of all property within his district. This would be subject to review by the local governing authority which would be either

the police jury or the city council in that particular area.

Next, it would be reviewed by the Louisiana Tax Commission and the final appeal would be to the courts. I just leave you with this thought in mind that this would take us out of the problems which we have had in our committee. It also would make a much better and a more salable type of constitution because if the parishes so wanted, they could leave their classes of property the same as they have established at the present time. Therefore, there would be virtually no increase or decrease in particular classes of property and the taxes that they pay within that district. However, it would allow us for the opportunity for change into the future.

I just give you these ideas so that you might ponder them and decide for yourself whether you want the state to control the local governing authorities or you want them to determine their future.

Thank you.

[Adjournment to October 13, 1973, 10:00 a.m., 1973.]

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Tuesday, October 9, 1973

ROLL CALL

and merciful Father, the giver of every good and perfect gift, we thank Thee for Thy love and Thy mercy and Thy many blessings. Help us, O Father, today to do Thy will. Give us Thy divine guidance and wisdom as we work on this constitution. Help us to walk humbly to do justly in the love of mercy. May the words of our mouths and the meditations of our hearts be acceptable in Thy sight. O Lord, our strength and our Redeemer. Amen.

PLEDGE OF ALLEGIANCE

PETITIONS, MEMORIALS AND COMMUNICATIONS

READING AND ADOPTION OF THE JOURNAL

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Hardin[Assistant Clerk] Unfinished Business. We have Committee Proposal No. 33. Section 1 was added by amendment, later deleted by amendment. Section 2 in the original document was deleted by amendment. Section 3 has been amended and passed. Sections 4 and 5 have been deleted by amendment. Section 6...

Reading of the Section

Mr. Hardin "Section 6. Privilege from Arrest
Every qualified elector shall be privileged from arrest in going to and returning from voting, and while exercising the right to vote in all cases, except felony or breach of the peace."

Explanation

Mr. Vick Mr. Chairman and fellow delegates, this is a repeat of the Constitution of 1921, Section 8 of Article VIII. That said, "Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance on elections and going to and returning from the same." We have just changed the language a little bit, as you can see. Mr. Chairman, I move its adoption and will yield to any questions.

Reading of the Section

Mr. Poynter "Section 7. Candidacy for Public

Section 7. No qualified elector shall be denied the right to seek public office in the election district in which he is registered, except as otherwise provided in this constitution."

Explanation

Mr. Poynter Mr. Chairman and fellow delegates, this is a repeat of the Constitution of 1921, Section 8 of Article VIII. That said, "Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance on elections and going to and returning from the same." We have just changed the language a little bit, as you can see. Mr. Chairman, I move its adoption and will yield to any questions.

Mr. Jackson Mr. Chairman and fellow delegates, this is a repeat of the Constitution of 1921, Section 8 of Article VIII. That said, "Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance on elections and going to and returning from the same." We have just changed the language a little bit, as you can see. Mr. Chairman, I move its adoption and will yield to any questions.

Mr. A. Jackson That's correct.

Mr. Zervigon Representative Jackson, what would this do to the requirement that a judge retire from the bench if he plans to run for any other office except another judgeship? Isn't he disqualified from doing that?

Mr. A. Jackson It would be disqualifying from the bench if he plans to run for any other office except another judgeship.

Mr. Zervigon Yes, it's already in.

Mr. A. Jackson It was in the Judiciary Committee.

Mr. A. Jackson Yes.

Mr. Lanier Delegate Jackson, this says that he cannot be denied the right to run for public office in the district in which he is registered. Can't he be registered in a district and, yet, not be a resident of the district?

Mr. A. Jackson Well, we are presupposing that. We are not presupposing what was the fact that you registered in the district meant that you had to be a resident in the district or else you couldn't have registered.

Mr. Lanier Weren't we told the other day that under the federal law it's thirty days?

Mr. A. Jackson Oh, that...you are dealing with the ability to register. That doesn't preclude the fact that you could have for residency established in another district. It's just talking about the right to register.

Mr. Lanier That's what I'm concerned about here. You have...as I understand it, pitched the right to run for office on whether or not he is registered, and not whether or not he's domiciled or a resident of the district. Is that correct?

Mr. A. Jackson Well, I think that, I think that we had a section in there dealing with residency requirements that was deleted. But, I think that what we are simply saying is that when you register in a district, you are a resident, you are a resident of that district. And it doesn't mean...

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Mr. Lanier Were in section...would you suggest...

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you had two residences?

Mr. A. Jackson Well, you can violate the law, if you want to, but the law is rather clear on it.

Mr. Lanier Well, the present constitution, as I understand your digest, says that you have to be a resident of the election district.

Mr. A. Jackson That's correct. That's...

Mr. Lanier If you move away, you lose your office.

Mr. A. Jackson Well, I think that we had...we set forth the requirements in the section that was deleted, but I think the law is rather clear on that.

Mr. Tate Mr. Jackson, Mrs. Zervigon raised a question that gives me some concern. We have not put it in the constitution that a judge can't seek any other office except the judicial office, but it's in the canon of ethics and also the legislature passed a law. Now, I also understand that the registrar of voters, and someone around can correct me if I am wrong, but there's a statutory prohibition against him seeking office while he is registrar and maybe for a period afterwards. See, there are some offices that, for reasons of public policy, you want...don't want them to use their judicial or registrar office to build up a political...

Mr. A. Jackson We have a section, Judge, to deal with that. Section 11 of the Election Article deals with the registrar of voters.

Mr. Tate And it specifically provides that he can't seek office or something?

Mr. A. Jackson Yes, we have...we set forth the conditions in Section 11.

Mr. Tate Well, we're still...I don't know what other offices there are like that. I know there are judges, I know there are judges, and I wonder what's the point of the concern? I unintentionally you may prohibit the legislature from making certain types of offices forego running for other offices because of their sensitivity and so on. I'm just asking questions, I guess, sir.

Mr. A. Jackson Well, I can't...we discussed the question at length, and we did feel that it was necessary to put a section on the registrar of voters, and we thought the whole problem as it relates to the judiciary was already cared for. We didn't...we couldn't think of any other prohibitions that we should exercise.

Mr. Tate Well, now, for instance, the civil service...I believe they have a prohibition against political activity. Now, whether or not that is wise or not, this would say that they can't...you either have to provide in the constitution every time you don't want someone to run for office, or else you've got a right to run for office.

Mr. A. Jackson Well, I think that that problem or question as it relates to civil service will be cared for in the constitution. Of course, personally, I have some strong feelings as to its validity, but I think it's...I think that that question, well, I know that that question is going to be cared for.

Mr. Tate Well, the only office, I really can't think of another provision right now, is judge. But, I do know that...there...for reasons of public policy, in the past, they have held certain offices so sensitive, so I wonder if it's wise to put it in the constitution?

Mr. A. Jackson Well, as I indicated earlier, I think we've cared for the ones that we know about.

Mrs. Warren Mr. Jackson, I think we discussed--Mr. Lanier brought the question up--we discussed being domiciled within a resident, meaning that you lived in it. We discussed that kind of pro and con, and when I looked at this, I thought that that word "qualified elector" would take in the fact that they had gone through the necessary procedures of being living in there.

Mr. A. Jackson That's exactly right. If he...

Mrs. Warren I wanted to be sure, though, before I...

Mr. A. Jackson If he was not...I mean, if he didn't possess the necessary residency requirement, he wouldn't be a qualified elector.

Mrs. Warren Thank you. That's what...

Mr. A. Jackson Mr. Lanier knows that; he just wants to aggravate me on the first thing.

Amendment

Mr. Poynter Delegate Sandoz sends up amendments as follows:

Amendment No. 1. On page 2, delete lines 11 through 15, both inclusive, in their entirety.

Explanation

Mr. Sandoz Mr. Chairman and fellow delegates, this amendment deletes this section. The primary reason for it is as I have outlined on Sections 5 and 4, previously. I believe with the Gravel amendment that this section can be better attended to in the election code, which will be and shall be enacted under the authority of the Gravel amendment, by the legislature. The...some of the questions that were asked of Mr. Jackson concerning the fact they may be...this prohibits the legislature from imposing certain other restrictions or additional qualifications. Some of the questions that were raised by Judge Tate about judicial officers seeking other offices, those are some of the reasons why I think that we need the flexibility of the legislature and the election code rather than freezing this into this constitution. Therefore, I submit that this section should be deleted and be relegated to the election code. I yield to any questions.

Question

Mrs. Warren Mr. Sandoz, I believe in trying to cut the constitution down, but I want to ask you one question that comes to my mind. We say we're going to leave this to the legislature. The...we're talking about running for office, can you see where the legislature would change this to suit their own needs? They run every four years, you know. Could you see any problem here?

Mr. Sandoz I see no problem, Mrs. Warren. I see no problem.

Further Discussion

Mr. Jenkins Mr. Chairman, what we are really dealing with here is the question of a basic political right. If we don't have a section like this in here, we won't have any logical link or connection which gives to every citizen the right to run for public office. We have, of course, given in the Bill of Rights, the right of each citizen to serve as an elector and to vote. We've made that right, except under certain very limited circumstances, inalienable. But, if there are going to be other restrictions on who can seek office, certainly those restrictions should be important enough that they are either provided in this constitution or that a mechanism is provided in this constitution for setting those additional qualifications. We have provided, or certainly we will in civil service, that people under civil service

provision under the Judiciary Article to provide that judges could not seek another office. We have provided here in this section, in Section 11 that registrars could not seek an office while they are in office. But, you see, if we don't have some sort of section like this, the legislature could arbitrarily, capriciously, come along and set all sorts of additional qualifications for running for office. There is no reason whatsoever that they couldn't come along and say that you have to be twenty-five years old to seek, say, a city council position, statewide. That couldn't become a statewide law; it could, if we don't have such a protection. There's all sorts of legislation which would be possible, punitive type legislation, which could be used to get at one group or another, one political faction or another, one individual or another, to prevent them or prohibit them from running for office under certain circumstances. Really, this is just about as basic as you can get -- the right of voters to run for office -- and I think we ought to provide for it in this constitution. If there are certain exceptions, we ought to either enumerate those exceptions, or we ought to make provision in the constitution which would give, specifically, the legislature flexibility in these certain areas. But, if we don't have it, we don't have the logical connection; we don't have the logical link from being a voter to being able to run for office, which is necessary if we are going to insure that every citizen has that. I yield to any questions.

Questions

Mr. Gravel: The provision you just mentioned would not cover this?

Mr. Jenkins: Well, I don't think the equal protection clause would because the equal protection clause, I presume, deals with people being treated alike. But, we obviously have arbitrary age limits on things like voting. If we have an arbitrary age limit on things like voting, why couldn't the legislature impose a similarly arbitrary age limit for running for certain offices -- like ought to be on the council or for things of that nature? I just don't know that we'll have the protection unless we have a constitutional provision on it.

Mr. Goldman: Woody, wouldn't it satisfy everything if we just ended this section by saying, "No qualified elector shall be denied the right to seek public office." Then, the rest of the constitution and the code would take care of everything else.

Mr. Jenkins: Let me think about that just a second. I think it probably would. We might have some problem with residency in some instances -- like we might have a residency requirement -- but I

Mr. Sandoz: Woody, if we adopt the committee proposal as written, under the Judiciary Article there is no prohibition against a judge seeking another office. That's a legislative prohibition at this time. Wouldn't that create a problem because you've got "except as otherwise provided in this

Mr. Jenkins: Well, I don't think that it's a vote proposal which would come up and provide that. Truly, I think we should have provided that in the Judiciary Article because there's no reason that you can arbitrarily -- I think the legislature should be able to arbitrarily come along and say, "Judges, you and you alone cannot seek another office." That seems such a basic derogation of their rights that it ought to be in the constitution, you see. I don't see how you can leave such a thing of tremendous magnitude to the legislature. If you're

ought to be in the constitution. So, the simple thing for us to do is to have a delegate proposal in this... if someone would come up with an amendment in this section, that would do it, too.

Mr. Jenkins: Well, unless we made some adjustment for it. But, I mean, that's what we're here for is to make adjustments and to make changes. But,

Further Discussion

Mr. Gravel: Mr. Chairman and ladies and gentlemen of the convention, I support Mr. Sandoz's amendment because I believe that the section which will be deleted by the proposed amendment, like some of the other sections, are not now necessary, and that we will be able, in the election code that has been authorized, to develop a comprehensive and a well coordinated plan for the election processes. I urge that you support Mr. Sandoz's amendment. Mr. Chairman, if there are no other speakers, I would like to move the previous question.

Questions

Mr. Jenkins: Camille, I know you are putting great confidence in this proposed election code. But, and I understand that you understand the workings of government and have influence in the legislature and probably will have a hand in the drafting of it, but aren't you asking us, as delegates, really, to take a lot for granted, to assume a lot, and to really lay some of the real basic rights of our citizens on the line when we talk about delegating from this constitution the protection for the right of every citizen to seek office?

Mr. Gravel: I don't think there's any problem about that. The election code, as I understand it, is something that I think is pretty obvious and would be, of course, covered by an election code. Is that a qualified elector, and the word "qualified" is there used, "shall not be denied the right to seek public office in the district in which he is registered." I don't think it's necessary to say that. I think that the process of handling and conducting elections, the qualifications of candidates, where the necessary and things of that nature, can all be considered by a code.

Mr. Jenkins: Let me think about that just a second. I think it probably would. We might have some problem with residency in some instances -- like we might have a residency requirement -- but I

Mr. Gravel: That's true. I think we've got to make sure that the courts have held, the right to hold office, and that, also, we guaranteed permanent registration. Otherwise, the mechanics of election should be... and excerpts that relate to the election process and

Uh, you... well, it's a

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said...

Mr. Gravel I said one was...that there were... steps had been taken with the idea in mind of preparing an election code by this administration, and some work along that line has been done by some of the state officials who are charged with the responsibility for conducting elections. That's correct.

Mrs. Warren Well, I think the question was put to you that you would probably be helping to write it.

Mr. Gravel Well, now, Mr. Jenkins just said that.

Mrs. Warren Well, I mean, you kind of...He said it, but you kind of nodded your head to give me the idea that it was. I'm just trying to find out.

Mr. Gravel Well, I'm going to quit nodding my head because I believe you read, sometimes, more into it than I do.

Mrs. Warren All right, now. You've answered that. You have an amendment here. You say you think Mr. Sandoz's is good, yet, still, you have an amendment here that is going to delete part of it and leave part of it. Now, which one do you think is the best?

Mr. Gravel No, I am supporting the Sandoz amendment. I hope it passes. If it doesn't pass, I want to insert the words "as a voter" to make it clear what we're talking about with respect to registration. It doesn't do any...it's more of a technical change than anything else. I hope that the Sandoz amendment passes. If it does not pass, then I think the language itself should be amended, Mrs. Warren.

Mrs. Warren I hope it doesn't pass, so somebody else can bring something a little bit better before us.

Further Discussion

Mr. Goldman Mr. Chairman, fellow delegates, I rise and you to defeat this amendment because I have another amendment that's coming up. I don't know how long it will be before it's ready, but I think it will satisfy everybody. I think this fact ought to be in the constitution: that no qualified elector shall be denied the right to seek public office. My amendment will read as follows:

"No qualified elector shall be denied the right to seek public office as provided in this constitution."

Questions

Mr. Willis Mr. Goldman, I'm not trying to be facetious, but what...but your amendment would just say that no one would be denied the privilege of seeking public office as provided in the constitution?

Mr. Goldman That's correct.

Mr. Willis Well, why do you want to say that if it's provided in the constitution?

Mr. Goldman Because I think we want to tell the people of Louisiana that every qualified elector has the privilege of running for office. We want it in the constitution, so there will be no doubt about it.

Mr. Willis Well, if you say "as provided in the constitution, it must be elsewhere provided, must it not?"

Mr. Goldman Well, the code will be provided through the constitution by the legislature, and in the Bill of Rights it's provided. That reference,

as provided in the constitution, takes care of reference to both of those. I think we ought to say in the constitution that every qualified elector is eligible to seek public office, or shall not be denied the right to seek public office.

Mr. Willis Well, don't you think that that passage would be about as ponderous as the provision that every individual, or elector, or citizen, or person should have the right to see, to live, to breathe, and to die?

Mr. Goldman I think we have that in the constitution already, and I don't think it's ponderous at all. I think it's perfectly plain.

[There is a question on the agenda. Pending vote ordered. Amendment adopted. 67-20. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 8. Vote Required for Election"

Section 8. No person shall be elected to any public office unless he has received the highest number of votes cast for that office. The legislature shall provide a method for breaking ties."

Explanation

Mr. Vick Mr. Chairman and fellow delegates, there was included for the obvious reason that it should be, as someone in high office said, that the...in order to make it perfectly clear that anyone who receives the highest vote in the election should be elected. Now, in the current code there is a provision for drawing straws in the case of a tie, and I understand in election contests for this office, that is, as delegate, in Orleans Parish they flipped a coin. We have the registrar here from Orleans Parish who, I believe, conducted that coin flip. But, it's a simple statement, and unless there are any questions, I move for its adoption.

Questions

Mr. Riecke Ken, in a case where they have...where the law provides that, like in the school board, where the highest number of votes is not the one elected if you have more than two candidates. Doesn't this contradict that?

Mr. Vick Well, then you'd have a runoff, wouldn't you?

Mr. Riecke Yes, but in the election he would receive the highest number of votes, but he would not receive a majority. Doesn't this contradict that?

Mr. Vick No, I think that there's a sense of finality, Louis, and if, in the case of a school board election, it would seem to me that if you are electing one, and two...you have a runoff situation, shall we say, well then, after the runoff if you had a clear-cut victory, well, that would settle the question. If it was not a clear-cut victory and if, indeed, a tie, the legislature would provide for tie breaking. I don't know if that answers your question.

Mr. Riecke It doesn't, no. It doesn't say that in your amendment.

Mr. Vick Well, Louis, what I can suggest to you is, then, an amendment may be in order to clarify it.

Mr. Riecke Okay, thank you.

Mr. Arnette Mr. Vick, it seems to say here that you would have to run in one representative district. In other words, this would prevent dual districts because suppose you have three people running for an office, and it is two seats to be filled. The

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person getting the second highest number of votes, not be elected according to this provision. Do you see that as a problem?

Mr. Vick Well, Mr. Riecke has just pointed up the problem insofar as school boards. It may conceivably arise in other contests. However, as you recall, the first amendment that this constitution accepted was to create single-member districts in the legislature, of course.

Mr. Arnette Well, I'm talking about something like, say, city council. Like in New Orleans, you've got three or four councilmen running at large.

Mr. Vick Two.

Mr. Arnette Okay, two running at large. You've got, say, four in the race. One of them gets a thousand votes; one of them gets nine hundred and ninety-nine; one of them gets one vote and one of them doesn't get any. Well, according to this, the man who got nine hundred and ninety-nine votes wouldn't be elected because he didn't receive the highest number of votes for that office.

Mr. De Bliieux Mr. Arnette touched upon the same question I have. This doesn't even provide for a majority of the vote. I'm wondering about this: where you have only one position to be filled, and you have several candidates running in that race and neither one of them receive a majority. Would this...could the person receiving the highest number of votes, under this particular section, say that he was elected to that office?

Mr. Vick: That's within the realm of conjecture.

Mr. De Blieux And yet, he ~~was~~ not have received the majority?

Mr. J. L.

Mr. De Blieux: Where you have multiple offices to run, then you might have two candidates that might have a majority of the vote. But the second man may not...since he didn't receive the highest number of votes, it might be contested that he wasn't elected to the office. Isn't that correct?

Mr. Vick I would suggest to you, Senator, as I suggested to Mr. Riecke, that an amendment most certainly would be in order to clarify that.

Mr. De Blieux: Don't you think this could be better taken care of in the election code, we should

Mr. Vick That, also, might be a remedy.

Mr. Roemer Kendall, over here--the little guy
right here.

Mr. Vick Right, Right.

Mr. Roemer can't make sense of this...these two sentences back to back which doesn't seem to be unusual of the confusion of this particular article. It says that "No one shall be elected to any public office unless he has received the highest number of votes cast for that office." Well, in the case of a tie, who received the highest number

On July 20, 1991, they mutually agreed that they had concluded business in 1990.

M. JONES: Well, I think that we shall not be elected unless he receives the highest number. In the case of a tie, which, I think, is highly probable, the legislature must be called into session.

Mr. GILL: No. I would suppose that it was changed.

you break ties, other than flip coins or draw straws.

the flipping of coins?

Mr. Poynter Amendment sent up by Delegate Sandoz
as follows:

Amendment No. 1. On page 2, delete lines 16 through 20, both inclusive in their entirety.

Explanation

Mr. Sandoz: Mr. Chairman, fellow delegates, this particular amendment, I think...rather this particular section is bad for several reasons. Mrs. Zervignon, who I lean on heavily back there for advice, says that this is a very good idea. I have a situation where a person would receive the nine number of votes and then it would subsequently be decided that he acquired that right...those votes by fraud and yet, he couldn't be denied a right to take off his uniform and go to work. There are many other problems that have been pointed out to this particular section by the questions which were asked of Mr. Vick. Again, I submit that this section can be better covered in the election code. We have no comparable provision under the existing constitution. I submit that it is best to delete this section.

Mr. A. Landry Mr. Sandoz, if we were to adopt the proposal, wouldn't we be putting into the constitution what is now in the statutes under R.S. 18:356 for primary election, and R.S. 18:550 of the general election laws?

Mr. Sandoz: Yes, we would.

Mr. A. Landry All of this is set out in the general election laws and the primary elections...and all we would be doing is putting it in the constitution, is that correct?

[illegible]

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either because someone doesn't understand it or because it is not written in a way that everyone agrees with. The argument was made to delete it. Listen, you can't get any more basic than the fact that people, when they are elected to office, ought to be the ones who receive the highest number of votes. Now, we have in this constitution, in the Legislative Article, gone into intricate detail about three readings of a bill and public hearings; we went into all of that. We went into great detail in the Executive Article, in the Judicial Article. We even talked about judges' retirements. In the Local Government Article we went into details of ports and levee districts and all sorts of things. Now, we have here a simple section that requires that before people can be elected to office, they must have received the highest number of votes; something like that cannot be relegated to an election code. An election code will be a lengthy, detailed explanation of election law. We are talking here about basics, and this is as basic as you can get. You know, I fear that too much personality has gotten into the discussion of this article. I know you know that some people on this committee oppose some of the provisions of the Government Committee, and some people still have that in their craw. But, you know some people proposed an alternative Bill of Rights a long time ago, and wanted to junk the whole Bill of Rights. Extending our personal controversies and old grudges and animosities isn't going to make for us a better constitution. If people are voting on that basis, they are making a terrible mistake. We can't cut off our nose to spite our face. This is extremely important. Let's don't open the way for people to be swept into office even though they haven't received the highest number of votes. We might have a popular governor who passes through the legislative provisions saying, "in the next gubernatorial election, people will run by tickets and the whole ticket of the winning gubernatorial candidate will be swept into office. We can't allow legislation like that. We can't allow leeway for it. We have to have protections against it. So, let's adopt this section. Let's make any amendments that need to be made. But, let's adopt this basic protection. So, I urge the defeat of the amendment."

Question

Mr. Stovall Mr. Jenkins, do you know that most of us feel that this is unnecessary, not because of any personal animosity, but because you really haven't presented any justifiable reason for it being in the constitution?

Mr. Jenkins Reverend Stovall, I thought I had, really, explained some justifiable reasons, certainly relative to the other things that we are including in here. I think that for one thing we need protection against ticket sweeping into office by people who haven't received the highest number of votes. Certainly, we need provisions that will protect us in this basic way. I mean, my goodness, if we don't, we are having a possibility where laws could be passed that would provide that someone other than that person who receives the highest number of votes could be elected to office under various circumstances. We might have, for instance, one party able to sweep into office if the head of the ticket of that party were chosen for office. There are all sorts of punitive legislation that could be passed, and that's why we need this provision in here.

[Previous Question ordered. Record vote of 70-22. Amendment adopted: 70-22. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 9. Limitation on Term of Office

Section 9. No term for any public office elected by the people shall exceed four years, except as otherwise provided in this constitution."

Explanation

Mr. A. Jackson This section is similar to one that's in the present constitution; of course, there are some exceptions. We have provided for those exceptions as they relate to the judiciary and for district attorneys. Of course, I know there will be some questions raised about school boards. We have received information that the Committee on Education will provide for the exceptions in the Education Article. If there are no questions, Mr. Chairman, I move for the adoption of this section.

Questions

Mr. Anzalone Mr. Jackson, at the present time, are there some city court justices in the state who have six-year terms?

Mr. A. Jackson I...yes. I have been informed....

Mr. Anzalone Are these people now incorporated in the constitution?

Mr. A. Jackson I would think so. I see Judge Tate nodding his head; he said that they were provided for in the article on the judiciary.

Mr. Anzalone But, how about the ones that are yet to come?

Mr. A. Jackson What?

Mr. Anzalone How about the ones that are yet to come, the new ones that we are going to set up, hopefully?

Mr. A. Jackson It's cared for.

Mr. Anzalone It's cared for?

Mr. A. Jackson Yes.

Mr. Anzalone Are you satisfied that they will also be entitled to a six-year term?

Mr. A. Jackson Yes.

Mr. Anzalone Will you please cite me your authority?

Mr. A. Jackson You see me after class.

Mr. Riecke Mr. Jackson, I don't believe the juvenile judges in the city of New Orleans are covered in the constitution or in the judicial amendments. Wouldn't this mean that they would be cut from eight years to four years?

Mr. A. Jackson I don't think so. There is a delegate proposal on juvenile judges and the provisions of the juvenile court. I'm trying to look in the article to see if it's provided for; I'm not sure, Mr. Riecke.

Mr. Riecke I don't think it is, but if it is, it's all right. But, if it isn't, this would cut their term to four years.

Mr. A. Jackson As I thought, I thought my memory serves me...it served me correctly, there is a proposal that will care for that, Mr. Riecke.

Mr. Riecke Well, I hope it passes.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Casey]. On page 2, delete lines 21 through 24, both inclusive in their entirety.

Explanation

Mr. Casey Mr. Chairman and delegates, Section 9, being a limitation on terms of office for any office held in Louisiana other than those offices

specified in our constitution, which we will propose, which gives greater terms in four years. Section 9 limits any terms to four years. Now, we do have problems in this area. I might mention this before going into some specifics---that today's constitution, the 1921 Constitution, as shown in our digest which was received by the State, does not mention providing for this type at all. I think it's worthy of mention that the school board in many areas---and maybe all areas---are for six-year terms. Whether that will be contained in this constitution or not, we don't know at this point. I think Mr. Anzalone asked some very pointed and appropriate questions about the judiciary, because we have a number of special courts in the State. We establish special courts in parishes or in districts---special courts: for instance, family courts and juvenile courts, as distinguished from a district court and a parish court. I think it's certainly appropriate that those courts that might be established in the future would have the opportunity to have six-year terms, rather than four-year terms. The District Court, the Municipal courts, to try city ordinances as we have in New Orleans. Traffic courts can try violations of traffic ordinances as we have in the city of New Orleans; Alexandria may want that one day; Shreveport may; Lake Charles. I would hate to impede the method of election of judges in the future by changing the terms of the judges. I think I might like the term of school boards to four years rather than six years, by limiting the terms of certain locally elected officials, which might be established by the home rule charter, to four years rather than six years. There may be some home rule charters where you may wish to elect a mayor only once and he cannot succeed himself. You may wish, in some home rule charters, to elect an appointive mayor; he might be elected for six years or five years, rather than four years. My main point is, this takes away from the legislature the availability of the flexibility which rightfully belongs in legislation rather than in the constitution. Rather than lock it in today so that ten years from now you want to establish longer terms for something, let the legislature have the right to enunciate our constitution. I urge acceptance of the amendment to delete Section 9.

Mr. Sutherland. Mr. Chairman, fellow delegates, I'll be brief. But, I did want to clarify a couple of statements that were made up here. One was that the Educational Article will contain a provision concerning school board members. That is not correct. The proposals that have come out of committee do not contain anything to do with school board office. One of the reasons is that some of the school board members are elected for four-year terms and some are elected for six-year terms. Therefore, it would be difficult to put anything in the constitution as to what...which would govern. I would suggest to you, that we leave this provision out of the constitution and let the legislature decide and leave it up to the legislature to determine the terms of office of the elected officials.

Mr. Jenkins: Matt, don't you agree that without

"Mr. Jenkins. Wouldn't the appropriate remedy be to have a provision like this:

review of public officials.

Mr. Sutherland: Woody, the only thing that bothers me is that if you are going to have to anticipate all of the exceptions into the future, I don't think we can do this at this time.

not later amended, would this not preclude the overlapping election of school board members like we have now when six are appointed? In other words, it would not pre....it would preclude 2-2-and 1 like we have in New Orleans. Isn't that correct?

Mr. Sutherland: That's right. New Orleans has six-year terms for its school board members with overlapping terms. That's right.

Mr. Riecke This will prevent overlapping term
thank you.

Reading of the Section

Mr. Poynter "Section 10. Prohibits
Funds
Section 10. No public funds shall
urge any elector to vote for or against any candi-
date, nor appropriated to any candidate or political
organization."

Mr. Vick: Mr. Chairman, fellow delegates sorry that Delegate Wall is not here to this. This is his beten noire and it's of the famous statute that he had passed of years ago in order to prohibit states from using state funds to lobby for a particular aim, at that time, was to let Orleans Levee Board from excessive Now, this proposition merely does is, to forbid excessive for funding campaign. One thing it does not do is use of school board funds to questions that they are concerned no questions, Mr. Chairman, I am 100%

you see where we would go broke trying to support
 office, that qualifies for public office?

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Mrs. Zervigon Mr. Vick, this has in it a prohibition for campaigning for or against candidates, appropriating money for or against candidates of two political organizations. If I read it correctly, it doesn't say anything about public money for or against an issue or a proposition—like a bond issue or an amendment or something like that.

Mr. Vick That's correct; it does not.

Mrs. Zervigon O.K.

Mr. Vick I move its adoption.

Mr. Fontenot Mr. Vick, would this include, possibly, not only funds but also services rendered? Take, for instance, a city council who are up for reelection, providing gravel and other services to the local people to get the local people to vote for them. Would this be prohibited if we adopted this language?

Mr. Vick The intent of this section is a clear, unequivocal prohibition to forbid the use of public monies to finance a partisan, political campaign.

Mr. Fontenot It has nothing to do, then, with the possibility of the police jury or the city councilmen doing special favors for individuals to get them to vote for the incumbent at reelection time, does it?

Mr. Vick Well, I don't know what you mean by favors. But, if you are talking about taking money from the public weal to advance the cause of any individual in a partisan manner, I would say that clearly...is a clear prohibition.

Mr. Denberry Mr. Vick, you are familiar with the present federal law which permits a deduction on an individual income tax return up to fifty dollars, or whatever it is, in connection with political contributions. Would this prohibit a similar provision in the state law?

Mr. Vick No, as I...I didn't answer that...in response to Mr. Champagne's question, I didn't answer the way I would answer your question, which is that that is private monies...those are private monies.

Mr. Denberry Well, of course, it permits the deduction from a tax return and, at that point, the taxes are public funds.

Mr. Vick Yes, but that theoretically in an amendment.

Mr. Denberry Correct. I just wanted to be sure in case this state ever adopts a similar law....

Mr. Vick No. This would not prohibit that sort of thing—public monies.

Mr. Lanier Is this type of activity presently prohibited by statute?

Mr. Vick Only insofar as the use of public monies are concerned in advocate as in the last, I believe, general election. The advocating by an agency of a provision that would be favorable to them. The statute deals with the use of public monies....prohibits the use of public monies to advocate an issue that they are particularly concerned with, and that is, soliciting votes as it were. It is not an educational thing; that's what the statute prohibits. But, the abuse that Mr. Wall was attempting to correct was the solicitation of votes and not education.

Amendment

Mr. Poynter Amendments sent up by Delegate Avant as follows:

Amendment No. 1. On page 2, line 27, immediately after the word "candidate" and before the comma,

insert the words "or proposition".

Explanation

Mr. Avant Mr. Chairman, ladies and gentlemen of the convention, this is, as you can see, it is a very simple amendment. This section with the amendment that I am proposing would read that "No public funds shall be used to urge any elector to vote for or against any candidate or proposition, nor appropriated to any candidate or political organization." My amendment simply adds the words "or proposition." Now, what that is aimed at is to prohibit the use of everybody's tax money being spent by some particular government agency or governmental subdivision to promote propositions of one sort or another, which everybody may not be for. In most cases, everybody is not for. Now, this would apply not only to bond issues, but such things as constitutional amendments, proposals to amend a local home rule charter, or any other type of proposition, of whatever nature it might be, that could appear on the ballot and be the subject of vote by the people. I submit to you that that is only right, and only just, and only proper. I dare say that there has never been a proposition appear on a ballot which had the unanimous consent of everybody in the public. Otherwise, there'd hardly be any need to have an election. If there is an amendment afoot to accomplish a certain thing, or if there is a bond issue afoot to accomplish a certain thing, it should be up to the people who favor that and the proponents of it to put up the money to pass it. That takes the tax money of all of the citizens and spend it for that purpose. Such as television advertisements, radio advertisements, newspaper advertisements, door-to-door solicitation, or any other type of politicking. In other words, this amendment simply makes it clear that public funds shall not be used for political purposes, whether it is to promote the particular candidacy of an individual or to promote the particular wishes of a certain segment of the population, insofar as some political proposition is concerned. I urge you to support this amendment.

Questions

Mr. Rayburn Mr. Avant, would you mind defining as to how far this language could go? I'm very familiar with the bond issue that was called by the local school board. Several letters to the editor in our local paper were along this line. What will the money be spent for? How much will be spent at this school or that school? The local school board came back with a very definite and complete definition of how every dime of the money would be spent in the event the bond issue passed. Certainly, they didn't pay for that out of their pocket, which I don't think they should have. It was public information, and it was information that the people desired. Under your language, I'm afraid that unless they saw fit to pay for an ad themselves, outlining the proposition or the proposal, that they could not do it.

Mr. Avant Mr. Rayburn, this is not aimed at the dissemination of factual information. If you will read it, it says, "used to urge any elector to vote for or against." It is not aimed at matters that are strictly educational.

Mr. Rayburn I know, Mr. Avant, but what's got me concerned, if I'm having to vote on a bond issue, and I want the facts to make my mind up, whether I'm for it or against it, and the local school board prints the facts as to how the money will be expended, that might have a lot to do with whether I was for or against it, and that's what I'm thinking about, and that's what concerned me, and that's why I asked you, would you give me your opinion as how far-reaching this language is.

Mr. Avant I think that they have to urge you, and the language of this section is what is says, "to urge any elector to vote for or against any candi-

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Unless a certain constitutional amendment is passed, which will permit monies to be spent for a certain thing, such a relocation of assistance, if you remember, the State of Louisiana will lose "X" million dollars in federal funds, that's not urging you to vote for or against that. As long as it is truthful and factual and educational, I'm not arguing about that, I'm talking about when they go and get on the television, and they actually polio-tick, and they urge you to vote a certain way.

Mr. O'Neill Mr. Avant, you remember Mr. Lennox's amendments the other day, and him telling us about the levee board spending six hundred thousand dollars to campaign statewide for an amendment. That was for the amendment. You're...what you're proposing here would prohibit that, and that's what you're aiming at, right?

Mr. Avant My amendment would prohibit the use of public funds to urge any elector to vote for or against a proposition, not prohibit the use of public funds to set forth specific non-controversial, factual information, which the public may need.

Mrs. Corne Mr. Avant, my question was answered, in part, by your answer to Senator Rayburn, just now. However, wouldn't that be true of a city council trying to inform the public on public improvements that were needed, and certainly that would be in the light of urging the people to vote for, since the city council would then be the ones who are promoting the deal.

Mr. Avant Mrs. Corne, I can tell you that tomorrow we're going to have a hurricane, and the winds are going to be a hundred and ten miles an hour, and there's going to be fourteen inches of rain dumped in this area within about an hour and a half time. I can tell you that, if it's true and it's factual without telling you. "Now, Mrs. Corne, you'd better get yourself to higher ground. Do you see the line I'm trying to make?"

Mrs. Corne Yes, sir.

Mr. Avant As long as it is factual information, and does not get down to the level of politics, I see no harm in it. But, you know--and I think you know, you should know, and I know--that much public money is spent, not on education, but purely and simply politics, under the guise of education, perhaps. That is the kind of thing that we're trying to stop.

Mrs. Corne How would we find police the tricks?

Mr. Avant Mr. Corne,

Mr. Corne How would we then police the tricks?

Mr. Avant I don't know. I didn't hear you.

Mr. Corne I don't know. I don't know of any tricks to that trade, you know.

Mr. Avant Oh, yes, ma'am...we can't write anything that's going to be absolutely one hundred percent bug proof. We can go back over everything we've done, and I can tell you all kind of things that might happen, whether they will happen or not remains to be seen.

Mr. Chatelain Delegate Avant, I've got a...this is a...we have a policy in south Louisiana, and in particular, Lafayette Parish, where the city council and the police jury makes contributions of Commerce, Mardi Gras Association, and the Safety Council. Now, as to the Chamber of Commerce, it's...will endorse certain public bond issues, such as...

Will you see any conflict here, sir?

Mr. Chatelain Well, that's what I wanted to establish here...to make a record of the fact that, in your opinion, it would not preclude a city council or a police jury to give funds to the Chambers of Commerce, safety councils, and other organizations such as that?

Mr. Avant Now, I think that if they were doing it specifically, knowing that it was then going to be used to urge any elector to vote for or against any candidate or proposition, and they were trying to do, indirectly, that which they could not do directly, I think it would be prohibited. But the point I'm making is: for instance, let's say, that the budget of the Chamber of Commerce is a hundred thousand dollars a year, and the city of Lafayette has a contribution of two thousand dollars a year, that's a small part of that budget, but, in fact, the Chamber of Commerce publicly endorses a project that has to do with civic improvement such as drainage or street improvements or, etc...

Mr. Chatelain The gentleman has exceeded his time, Mr. Avant.

Further Discussion

Mr. Leithman Mr. Chairman, fellow delegates, I rise in opposition to the bond issue because I've been down this road just as Mr. Riecke and Mr. Sutherland, Mr. Aertker, and the other school board members have. But, I've been down this road with...on a school board proposition, and it's basically this: we have great needs in Jefferson Parish, a population of some 420,000 people to pass a much needed bond issue, and we attempted to do it, much as this amendment spells out, without urging any people, without expenditure of monies to promote it. The bond issue failed. Why did it fail--and this was brought back to us by the citizens of the community--we did not spell out just what was involved with the bond issue, where the monies were to be spent. We then decided to go again with the same bond issue; this time we utilized some funds, public funds, to publicize the bond issue, to spell out clearly exactly in dollars and cents what schools were to be constructed, where the schools were to be constructed, what renovations were to be undertaken, and spelled the entire matter out. Without any problems whatsoever, the bond issue passed. So, I say that I think it would be wrong for a public to support something, a cat in a bag, without knowing what the monies are to be spent for, and I just think that...there may be limitations, you may want to put restrictions on your school boards, but I don't think it belongs in such a blanket proposition and in the constitution. I'll yield to any questions.

Questions

Mr. Munson Kenneth, in your second advertisement, when the bond issue passed, you spelled out the facts, but you didn't urge the people to vote for or against the proposition, did you?

Mr. Leithman Bob, I don't know the exact format that was used in the bond issue advertisement. But I would say this, that we probably urged the citizens to get out and vote on Nov. 10, or Nov. 15. I don't know the exact format, but I would say that we urged the people to get out and vote...

Mr. Chatelain The gentleman has exceeded his time, Mr. Leithman.

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my question is: did you say, "Vote yes"? I think that's what this amendment is aimed at, is whether you urge a person to vote for or against. Giving facts, to me, would not be a violation of the law.

Mr. Leithman Well, I think the fact that yes or no was not used, if you're going to urge the people to vote for this proposition...if you don't have to say "this proposition," you say "Please, get out and vote on Nov. 15," and here you're presenting them the facts, I think it's something unwritten, that you're urging the vote for it, in essence.

Mr. O'Neill Ken, my question was in the same line as Bob's, but I just wanted to know: do you think that what you did would be prohibited under this amendment by Mr. Avant? I really don't, but I'm asking you if you do.

Mr. Leithman I think it would be because if you, again as I mentioned to Mr. Munson, if you're urging the people to vote on Nov. 15, and you're itemizing what they're voting for, I think, whether it be written in black and white, yes or no, I think you're urging them to support it.

Mrs. Warren Mr. Leithman, you made a statement at the podium a minute ago. You said there might need to be some restrictions put there. Now, what restrictions do you think should be put there?

Mr. Leithman I really don't know what restrictions. I think those restrictions that should be placed, should be placed in the statutes, and not in the constitution. Along the line as a limitation, maybe a small fraction or percentage of your bond issue might be appropriate, something of this nature, where it may be utilized in newspaper advertisements or things like this, but I just don't see a blanket prohibition. But, I think there, perhaps, should be some limitation as to what monies, how much monies, and it may be a fraction. Mrs. Warren, of the bond issue. That may be appropriate, but right now I'm not prepared to tell you, but I think whatever restrictions you come up with, whatever limitations you place, should be done in statutes.

Mrs. Warren Thank you.

Mr. Champagne Don't you agree, Mr. Leithman, that if we included this provision in the constitution, that we would probably open the road to new legal interpretations? Did you...did you tell them to say...to vote "yes" without actually putting "yes," and so forth? In other words--and you answered the other question already--this could well be taken up by legislation, rather than imbedding it in the constitution.

Mr. Leithman Very definitely so.

Mr. Roemer Kenny, there was a line of questioning earlier, that tried to get you to answer whether or not in your advertisement, you solicited a yes vote or a nay vote, on an issue. Isn't that somewhat a hard line to draw, when you present an advertisement that lists all these points as the good things, and all these other things as bad, and then say "get out to vote." Isn't that the same thing, in your mind as soliciting a vote one way or another?

Mr. Leithman Oh, yes, if you're itemizing what monies are going to be spent for, this is the projects that will be constructed by virtue of this bond issue, and you ask the people and you urge them to vote on Nov. 20, or whatever have you, I very definitely say...you're urging them to vote for the proposition.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, I want to rise in opposition to this amendment, and I'll tell you the reason why I believe so. I agree with Mr. Avant and those who

proposed that taxpayers' funds not be used under certain circumstances to advance the interest of candidates or political propositions. However, the language that you would need to be able to accomplish this purpose cannot be placed in this constitution, and I feel like that you ought to do that by statute, legislative authority, where you can spell it out in detail, as exactly what is meant, and not prohibit the legitimate use of public funds, sometimes, for giving factual information. Now, as I see this, if you have some proposition that's being advertised, one person may consider it factual, the other person will consider it political. You've got a lawsuit, and who's going to be the judge? Not the ones who sit here in this constitutional convention and told you, one way or the other, what was or was not political. It's going to be what that judge thinks at that particular time, and I just feel like it ought to be spelled out in detail in legislation, so that you can guide him accordingly, and putting a general provision, like this, in your constitution, is going to prohibit the fact that you can't spell it out in detail, and make it necessary to accomplish the legitimate purposes, and to prohibit, what we would consider the illegitimate or desired things that you want to prohibit by this legislation. I don't think you ought to put this kind of language in the constitution, whatsoever.

Vice Chairman Casey in the Chair

Further Discussion

Mr. Riecke Mr. Chairman and delegates, I rise in opposition to the Avant amendment. This amendment provides that no money shall be spent for the support of any candidate or proposition. Now, as Mr. Leithman said, this vitally affects school boards. In the parish of Orleans, we had schools that were a hundred years old, forty-five and over children to go to class. The general public doesn't know this unless they're told why we need this bond issue to build these schools. The general public is averse to any new taxes or any bond issue, unless they know it's going to be well spent, and how it's going to be spent. Now, every man and woman here would vote against a new tax or a new bond issue, if they didn't know specifically what purpose it was going to be used for. Now, we were able, at the school board in New Orleans, to tell the public: this is what we need the bond money for; this is how we're going to use it; these locations are where we're going to put the schools, and the public was able to know how badly the school were needed there. But, this amendment would...now, insofar as Mr. Avant said that it would not be interpreted to give information, but only if it was to urge, as it says in there, to urge people to vote for or against something. Well, how, in the name of common sense, can you say, "we need schools; we need more classrooms; we need this or we need that," without urging anybody to vote for it. Any judge--I'm not a lawyer or a judge--but, if I were a judge, and we put in the school board that we need the money for this purpose, certainly, that's urging the public to vote for it. This is a bad amendment, and if the legislature feels that there's any improvement on this, that they can make, well, let's leave it up to the legislature. Please vote against this amendment, and I understand, Mr. Lennox's amendment following this is just as bad, or worse, and I'm going to urge you to vote against my good friend, Mr. Lennox, too. Thank you.

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I won't take but a minute. I, too, have to rise in opposition to this amendment. I think it's very bad for many reasons. In the city of Lafayette recently, two months ago, we passed a \$61,000 bond issue, for many needs in the city of Lafayette, and the city's budget was \$15,000--not to try to sell this--to offer it in its right perspective to the people. I felt this was, and as many other

out then having something in writing, and something on the media to tell them the needs for these improvements, the people would not have known how to vote for them. I think the progress and everything in this bond issue was greatly needed for the city of Lafayette. I could go on and on, but I feel that most of you feel that Avant's intentions were good, but I believe that we've got a situation here we'd better not take a chance with. I urge you to please vote it down, and, perhaps, something else may come along that's better. If there's no other question, Mr. Chairman, I move the previous question on the amendment.

76. _____ people vote against
77. _____

" Chatelain Absolutely, we had some vote against it About sixty-five percent had voted for

Mr. O'Neill Well, what you're saying, then, is that, even though those people opposed it, you're using their tax money to help finance a campaign for that bond issue. That's exactly what you're saying, right? Even though they're against it, their tax money is being used.

Mr. Chatelain: ... but, you know, those same people still live in Lafayette, and I hope they will continue to live there.

Mr. Cannon Mr. Chatalein, I was just trying to hypothesize the situation as to how a court might view public money spent, informing the public of the needs of the schools, and what have you, right after the board had called the bond issue election. If the school board, by an action, official action of that body, calls a bond issue election, doesn't this automatically put them on record as being for it. Therefore, any money spent would be improper under the Avant amendment?

Mr. Chatelain Absolutely right. By inference, you tell them you're for it. That's exactly right. There's no other way you can deny it. I certainly have to judge like Mr. Riecke said, but I certainly have to go in that direction. I agree very much.

Mr. A. Jacks : Mr. Acting Chairman, ladies and gentlemen of this convention, I rise in opposition to this amendment, not that I am unmindful of the many abuses that have been perpetrated against the people of this state in this area. But, I rise in serious opposition because I think that we are overlooking the abuses that have been so vividly pointed out by the maker of this amendment, and I refer to the whole area of public education and its importance to the growth of this state. I don't believe that there is a delegate in this Constitutional Convention that will deny that public education at this moment in this state, and this nation is in serious jeopardy, and people today are not being as rational as they ought to be, when they vote on propositions relating to education. They are being emotional, and it is, therefore, placing school boards in very, very serious positions, as they try to provide financing for public education. I know that all of us can recount from the past election, the abuses that you heard about here. But, I just ask you to think. I ask you to think about what public education means to this state. I ask you to think about the needs that we have in public education, and I ask you to think about all of the sound reasons that I think I cover this state simply because people are emotional, simply because people refuse to deal with the vital questions and issues before them, and are dealing with whether or not a black child is going to sit beside a white child in a classroom.

I want to recognize that school boards

Further

Mr. Jenkins: Mr. Chairman, what is the purpose of an election? Its only purpose can be to secure a true reflection of the public will, in order to give candidates or government consent to do a certain thing. If an election is not free, it gives no one consent, and how can an election be free, if the government is not free to do propaganda work? If the government is taking public funds, buying television ads, newspaper ads, radio spots, billboards, and telling the people to vote a certain way, whether it's for a candidate, or for or against an issue, it can't be a free election. In parish government, in the state government, in the government of local governing authorities and school boards, not giving subtle information about needs, but buying television commercials, saying vote for such and such a bond issue, vote for proposition number 2. I have in my files in my office, campaign literature put out, it doesn't say, "The reason this bond issue is proposed is because we need more schools to meet projected populations." It says on the front cover, "Vote for Proposition No. 4; vote for this bond election." Now, what is the difference between propaganda and that? What is the difference? There is no difference. That's exactly what it is. It's advertising. It's advertising on the television screen, and on the television screen it flashes a commercial, a ten second commercial, saying vote for Amendment No. 6, paid for by the Orleans Levee Board. I'm affronted by that. I think my rights as a citizen are being taken away and I think your are. Now, when you say a dollar can be taken and used to tell us how to vote on more taxes. Now, look at the proposition being given us: in Revenue and Taxation, as I understand it, there are no millage limitations, now, what governments, on all levels, can take our public money, use it to get us to vote or bond or tax, and then that same tax is used to pay for the situation, be in this state? Will there be any end to it? Now, the argument is made, well, there is a public need. Well, if there is a public need, then there will be public minded citizens who will get together funds, and inform the people, and urge them to vote for it. I don't think it's a good idea, they'll raise money and they'll urge people to vote against it. That's

manner. Now, we're talking here about how to get
charter elections, constitutional
elections, charter amendment elections.

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what the English words mean, "urge, vote, for or against." That's not what it means. It means just that. If you tell them to vote for something, then you're in violation of this section, not dissemination of information. So, let's maintain a system of free elections. Let's prohibit government involvement in the election process. If government is involved, it has no mandate to govern because it is not a free election. There is no true expression of the public will. It is a fixed election, a rigged election, a propagandized election, and there's no place for it in this sort of society.

[*Forum Calls: 91 delegates present and a quorum.*]

Further Discussion

Mr. Lennox Mr. Chairman, fellow delegates, the committee proposal on this particular subject matter is certainly O.K., and I'd have no fault to find with it, other than it does not go nearly far enough. Now, I can't improve on the dialogue that Mr. Avant has presented to you in favor of his amendment, but I would like to say to you, in discussion with him I understand he's going to ask in a moment for a suspension of the rules to withdraw this amendment and to come back with a minor change in that amendment, which might be found more palatable to a greater majority of the delegates on the floor. Now, let me submit to you that this particular amendment tracts a federal statute. Really, the only difference being, is the federal statute has penalties tied to it. If you violate the federal statute, there are penalties involved. There are no such penalties involved in this amendment, the Avant amendment, that's before you right now. Now, as a very young man, I watched the careers of Mr. Riecke and Mr. Sutherland, as school board members in Orleans Parish, and I submit to you that they both served with honor and distinction. But, I can tell you otherwise that school boards in this state have not been devoid of corruption over the years, and there have been scandals with school boards, and if there's any question about that, Mr. Jackson, see me after class, and I'll give you a few examples of the subject. I would urge that you consider Mr. Avant's proposal to suspend the rules, and make an amendment, and resubmit this amendment, after which I would urge your adoption of the amendment. Thank you.

Questions

Mr. Juneau Ed, I agree in concept with what you're saying. It does bother me to put it in the constitution. You said that there was a federal law, pertaining to very much the same subject, but I want to clarify this. The federal law you're talking about is in a statute, and has nothing whatsoever to do with the Federal Constitution. Isn't that correct?

Mr. Lennox Well, in fact, that's correct, but I think we both recognize that the Federal Constitution was written back in the eighteenth century, and we're talking about a twenty-first century constitution.

Mr. Juneau Then, what we have is sort of a prohibition in the state constitution, but with no criminal sanction, or no sanction built into the constitution. Isn't that right? That's what we'd have if we pass this amendment.

Mr. Lennox Our amendment, as it's presently drafted, embraces no sanctions, but I think you could, you or I could go to court, and stop a public agency from using tax funds in this manner, under this amendment, the Avant amendment, to this article.

Mr. Juneau Can you visualize, within the Executive Department in the state, a situation between, let's say, Arkansas and Louisiana or Mississippi and

Louisiana, where the Executive Department will want to advocate a certain position that would involve two states?

Mr. Lennox I think that's possible. I think they'd just have to find some way to do it without using public money.

Mr. Juneau Or they would be prohibited in that kind of case under this?

Mr. Lennox Be prohibited from using public funds. That's the intent of the amendment.

Motion

Mr. Avant Mr. Chairman and fellow delegates, I would withdraw the amendment. I would resubmit it exactly like it is. That is, inserting the word "or proposition" in the same place where I now have it, but I would add a new sentence to the section at the end of line 28, following the word "organization" and the punctuation mark "...", which sentence would read: "The legislature shall pass laws to implement this prohibition." I would then, if I am permitted, explain the amendment, as resubmitted.

[*Amendment withdrawn.*]

Amendment

Mr. Poynter It keeps the first amendment and adds -the best way I think we can do this, Mr. Avant- adds Amendment No. 2 as follows:

On page 2, line 28, immediately after the word and punctuation "organization," add the following, "The legislature shall pass laws to implement this prohibition".

Explanation

Mr. Avant Let me explain what I am trying to do. In the first place, I ask you to heed very well the words of Representative Jackson and they were so profound, I think, that I wrote them down, I think, in an exact quotation. He stated that "he is no unmindful of the many abuses that have been perpetrated against the people of this state in this area." Now with that in mind, that's why I offered this amendment. I want to do something about those many abuses.

Now I am the first to admit and the first to recognize-and I don't disagree in philosophy at all with friends like Mr. Jackson and Mr. Riecke and others--that there may be certain cases where you need to get certain facts before the public. But in my mind there's an entirely different...in that ...and straight out and out simple politicking. Now I think that what we are doing here is simply putting in a general proposition, a constitutional mandate that you don't use public funds for political purposes; you don't use them to support candidates; you don't use them to polittick your little pet projects. We then mandate the legislature to do something about that, to implement that prohibition. The legislature, in its wisdom, will be able to establish and draw guidelines of a reasonable nature which would draw the distinction between education and politics. I am the first to admit that sometimes it may be a fine line.

But going back to Mr. Jackson's statement, there have been many abuses perpetrated against the people of this state in using everybody's tax money for some politician or group of politician's pet little projects. Even after the people's tax money has been spent, they still couldn't convince the people, and they voted down the scheme. That has happened time and time again.

Mr. Casey Mr. Avant, may I interrupt you just a minute. I think you were recognized, really, to explain the purpose of the change. I think it would be appropriate to make additional remarks during your close. I think I'm obligated to recognize the other speakers.

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Mr. Avant Thank you, ladies and gentlemen. Thank you, Mr. Speaker.

Further Discussion

Mr. O'Neill Ladies and gentlemen of the convention, I believe now, the change Mr. Avant, which you have allowed him to make in your amendment, I hope will insure passage of this amendment. I think several comments could be appropriate here—Several things which possibly need to be said. They have been said one way or the other, but I thought a lot about this, and I think out of this whole article, this was the one most important section.

You know, here in Baton Rouge, we are building a new governmental complex, a municipal center. Well, we tried to pass the bond issue twice, campaigned for it and pushed it, but both times the people voted it down. Apparently they had good reason for this. They didn't think their tax money should back a bond issue to build a municipal building. Well, it didn't much matter that they voted down the bond issues because we're going ahead full steam with it anyway. But the point is that those people who are against that bond issue should not have their tax money used to help finance the passage of the bond issue. I'd like to draw an analogy for you, and one that I think most of us will understand. I think the passage of this constitution is a perfect example of the do's and don'ts and what would be covered under this article.

I think most of you would agree that any money allocated to this convention should not be used to help finance a campaign for or against this constitution. But I think you would agree that possibly some of the money could be used for a tabloid which in very basic, simple terms would have the constitution written in it. I think this is the type thing that Mr. Avant's amendment would help insure. That you run a campaign for or against it; you can only objectively state it. I think the people, then, have to make up their minds.

I think Mr. Jackson's comments were possibly well taken. But I also think that these worthy purposes, which were voted down by the people, had good reason to be voted down by the people. They didn't want them. I don't think that they should be forced upon them.

Mr. Lennox stood up here and talked the other day about the New Orleans Levee Board spending six hundred thousand dollars in a campaign to help pass an amendment to the constitution this past election. My understanding of that transaction is that seventy-five thousand dollars was allocated for that purpose. It shouldn't have been allocated in the first place. But even though they went as far as spending six hundred thousand dollars, having cocktail parties and traipsing about the state trying to insure passage of that amendment... I think these are the wrongs that Mr. Avant is trying to prevent. I think that you would want to prevent those wrongs as well.

Read the section very carefully. I think the people who have gotten up here to speak against it, and I say not in a malicious way, are speaking from selfish viewpoints. They see only the good that it does them, not the harm that it does to other people. I think this section now with the new language added on will insure a passage of this, and I'd like to ask you for your favorable consideration. Remember, if one person, and in Lafayette apparently thirty-five percent of the people were against the bond issue, but if one taxpayer is having his money used in a way that he does not think is right, then I think he should have a right to complain. I think thirty-five percent of the people have a right to complain. I just think it's wrong to finance campaigns for bond issues or anything else at the expense of the taxpayer.

Mr. Conroy Mr. O'Neill, I don't have a copy of the amendment as it's been restated, but previously, as proposed by the committee, this was an absolute prohibition against the use of funds for certain purposes--for the use to urge any elector to vote for or against any candidate was a flat, absolute prohibition. Doesn't the language, as it's now been added, dilute the effect of this proposition as originally written insofar as it applies to the areas originally covered by saying that the legislature will implement this.

Mr. O'Neill Yes, Mr. Conroy, I think it does.

Further Discussion

Mr. Flory Mr. Chairman, delegates to the convention, I rise to support Mr. Avant and Mr. Lennox's amendment. I do so primarily based upon the statement and the facts as they stand in regard to the many abuses that have transpired in years gone by in the use of public funds to present to the public of this state only one side of an issue.

Of all of the issues that have ever been put on the ballot in this state, I can never recall public funds being used to give both sides of an issue. How can a voter of this state cast an intelligent vote without being presented both sides of the picture? So the only answer, of course, then, comes to the fact that in order to present the matter in fair light, then you have to prohibit the use of the practice that has gone on in the past by using public funds to espouse a particular purpose, only giving one side of an issue.

Now the legislature of this state, in the passage of the general appropriations bill, appropriating two and a half million dollars for the conduct of this convention during this fiscal year, wrote a specific prohibition into that act saying that not one penny of public funds could be used for the passage or defeat of the work of this convention. I think they did so wisely, because I don't think it right to take public funds and perpetrate something upon the people without giving both sides of an issue.

Take for an example, the act of the Levee Board of New Orleans that has been mentioned so numerous here from this microphone. You go back to the last time that the referendum was before the people for the passage of those constitutional amendments, and you remember the spot advertisements on television paid for by the New Orleans Dock Board. Primarily what they said was, "Vote for amendment... so and so." They didn't give details. They didn't give both sides of the picture. It was very unusual if a person throughout the state, who was not a resident of Orleans, to know what the real facts of the matter were.

Let me suggest to you on a number of occasions what has really happened, and I'll take in public bodies, let's say where a vote is ten to nine, five to four, to call an election to raise the ad valorem taxes. For whatever purpose it may be, the majority, of course, rules. The majority appropriates the funds to present their side to the public. But the four votes in a five to four situation has never had the right to have any funds allocated to their view point, when in fact, in truth, they may be right. Who knows? Because only the majority's side was presented to the public. I think it only fair that at least, if you are going to allow the use of public funds in this area, that you mandate

that both sides be presented to the public. I think the language that says that the legislature will implement this amendment, I think it's a good idea. I think it will be carried out. I'll be happy to answer any questions you may have.

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for want of somebody other to ask it of, I guess, but first of all, do you see this essentially as a self-executing provision and one in which persons aggrieved, general voters or taxpayers, would have standing to raise it, in opposition to expenditures of public funds? I think these are the key questions. I was wondering what your thoughts were on it.

Mr. Flory I think your question is a good one, Mr. Derbes. If you read the language of the section where it says "to urge," I think that is the criteria which would give a person standing in court if he saw public funds being used improperly.

Now, the reason for the additional language submitted by Mr. Lennox and Mr. Avant was to let the legislature prescribe the ground rules on what is meant by the word "urge" as far as public bodies, and with particular reference to school boards, in furthering a particular increase in ad valorem taxes, or whatever taxes, to present a fair and true picture as to what the needs of the system might be.

Mr. Derbes But, do you take the position that a principle part of the amendment as phrased, gives substantive legal rights to taxpayers and citizens, or is it merely a public policy statement which would have to be implemented by further legislation. If the answer is "yes" to the latter, then it would seem to me to be unnecessary in the constitution.

Mr. Flory I think the language that was added was a matter of clarification for those whose interests were...

Mr. Henry The gentleman has exceeded...you have exceeded your time, Mr. Flory.

Further Discussion

Mr. Stovall Mr. Chairman, ladies and gentlemen of the convention, I originally asked to be put on the list in order to move the previous question, because I think it was quite obvious that this is a bad amendment, and we should vote it down and move along.

However, as the discussion has proceeded, and as Mr. Avant has seen it necessary to add a further amendment, I think the issue has become clearer, and I feel the need to discuss it for just a couple of moments.

To begin with, Mr. Avant felt it necessary to add the statement the legislature shall pass laws to implement the provision, which in response to Mr. Derbes' question was recognition that it is not self-operating. It needs further legislation. It seems that we should simply leave it to the legislature rather than putting this kind of provision in the constitution.

The legislature can deal with it in order to correct the abuses without placing unnecessary restrictions on school boards and other legitimate public bodies who might feel the necessity to use limited funds in order to promote certain provisions that might be before the public.

The question that is before us is this. Do we want intelligent, informed voters, or do we want ignorant, blind, uninformed voters? It seems obvious that there are times in our urban society when many average citizens cannot be acquainted with the details of different propositions. They need to be informed through the mass media concerning definite provisions that might need their support and their advisability.

So, I encourage you to reject both of these amendments, and let's adopt the section that is given to us by the committee as it has been presented. Thank you.

Questions

Mr. Toomy Reverend, wouldn't you think the adoption of this amendment, which would weaken the part that we have presently written on the prohibition against money....

Mr. Stovall I can't understand your question, Mr. Toomy.

Mr. Toomythe adoption of this amendment, wouldn't it weaken the prohibition that we have written in the section against public funds for candidates?....leave it more or less to the discretion of the legislature?

Mr. Stovall Yes. If you add Mr. Avant's amendment, you are subjecting the Amendment No. 1, where it refers to money being used by a candidate, to some changes there.

Further Discussion

Mr. De Blieux Mr. Chairman and ladies and gentlemen, this new amendment isn't any better....if as good as the previous amendment which Mr. Avant withdrew, because all that this amendment says is that the legislature shall implement it. If you can't implement it to start with, how can the legislature detail it because all this does is prohibit the use of funds for any sort of a proposition that you might want to advertise.

Now, as I stated before, and I wanted to let you know again, that the only thing that you are doing here is telling the people that you can't say what is good or what is bad, or explain the procedure of speeches. In spite of what those who propose this amendment say, because if you like the proposition, you are going to say "that's alright for public funds." If you are against it, you are going to say "it's a use of public funds for political purposes." It's just hard to detail that type of information in a constitutional amendment like this. I think it's better to leave it to the legislature to say how, when and where, and where they cannot be used, funds of this sort, for the advertising of any issue or candidate, or whatever it may be. I just think it's a bad proposition. We ought to leave it to the legislature to set the details.

Question

Mr. Willis Senator, if we project your argument you just made, wouldn't it not make behooving for us to strike out the entire section and leave it for the legislature?

Mr. De Blieux I have an amendment to do exactly that, Mr. Willis.

Mr. Willis I'll embrace it.

Further Discussion

Mr. J. Jackson Mr. Chairman, ladies and gentlemen of the convention, I'll attempt to be very brief in my remarks. Let me suggest to you that, as obvious by the conversation here, that you have fifty percent on one hand saying about the abuses of the school boards and the levee boards, and fifty percent on the other hand saying that we ought to allow the people to be protected. It seems to me that if we voted for the Avant amendment, that we're just satisfying one fifty percent of it. It seems to me that we ought to delete, as Senator De Blieux has suggested, delete the section, leave it silent, leave it to the legislature to make the necessary corrections according to the situation that arises. I grant you that there is some talk about public funds for political campaigns. There is some talk about the necessity of school boards to present issues to the people. Can that very well be construed as being, and I imagine a court could possibly interpret it as being that it's political advertising. I don't think that we can solve the intricacies of the problem by adopting the Avant amendment. I would suggest strongly that, for the reasons that...that you can go either way, fifty percent on the part of the necessity, for the school boards and public agencies, to adequately inform, and to promote the interest and they are elected...most of them are elected by the elector-

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Mr. Avant Mr. Sutherland, is there anything in my amendment that would change the most commendable way in which you say your school board did operate?

Mr. Sutherland I don't know of any, Mr. Avant.

Mr. Avant And isn't it a fact that all this amendment would do would be to mandate that all such public bodies operate in that commendable fashion?

Mr. Riecke After you spoke, I didn't know whether you were for this amendment or not. Are you, or aren't you?

Mr. Sutherland I see nothing wrong.... I told you when I got up here I wasn't urging you to vote for or against it. I wanted to give you the facts. I'll let you decide whether you want....

Mr. Riecke You're neutral.

Further Discussion

Mr. Aertker Mr. Speaker and ladies and gentlemen, I know it will come as no surprise to you when I say I rise in opposition to this amendment. When I heard Mr. Avant introduce the first amendment, I was opposed to it. When I heard him introduce the amendment to the... and withdraw it and introduce another one, I'm still opposed to it, but for the simple reason that all I can see that he did with the second amendment was he inserted the subterfuge to get around the provisions of the first amendment.

I want you to remember when Mr. Avant presented this and he was being asked questions, what he said was, what he thought about it was he thought that it meant so and so, he intended that it meant so and so, and that there were a lot of questions to be answered about a lot of things involved in this thing. I tell you that when we have something presented to you with that many doubts and that many points involved into it, why we would ever give any consideration to putting that as a part of this constitution that would be binding in its effect just would amaze me to think that we would give consideration to it. I would like to reecho what Mr. Sutherland has told you. As superintendent of East Baton Rouge Parish for the last ten years, I have personally spearheaded five elections. We have never expended one single dime for any television, for any newspaper, for any radio advertising. Our sole expenditure was when we passed the resolution authorizing the call for any tax election we authorized an expenditure to issue a brochure. That's the brochure. Incidentally, that Mr. Jenkins had reference to about reasons why you should vote yes. I think that, as a school board, we ought to give some thought to "What is the responsibility of the school board?" What is the reason why people put them in there if it isn't to give them information about what is good in education, and what is needed in education? This is necessary in order to explain to the people what they need in education. I'll take it one step further; what is political about telling people of this state that they need a school in their community and if they don't build a certain school, and if they don't implement a certain program, what's going to happen to the education of their children?

I state to you that it is a responsibility of the school board. It is not a political deal when a school board gets a tax election for the benefit of the children of that community. I urge you, when you give consideration to voting for this amendment, that you think about what you would be doing. Don't stifle the initiative and the operation of the local school boards in this state; vote this amendment down.

Questions

Mr. Jenkins Bob, are you aware that other public bodies, perhaps not the East Baton Rouge Parish

School Board, but other public bodies have purchased television time, newspaper ads, radio spots, etc., aren't you?

Mr. Aertker I'm aware, Mr. Jenkins. I would suggest that if this is an abuse—and I consider it an abuse—why not handle it through the statutes where it should be and not put it in this constitution to handle it?

Mr. Jenkins Aren't you also aware that in the brochure, for example, that the East Baton Rouge Parish School Board put out, that on the front cover it did say "vote for" these propositions. It wasn't just an explanation, isn't that true?

Mr. Aertker That's correct.

Mr. Jenkins Isn't it also true, Bob, that in many instances—I know in our own parish—public school facilities, mimeograph machines, telephones, meeting rooms, have all been used to actively go out and urge people to vote for propositions appearing on an election ballot?

Mr. Aertker That's probably true. Incidentally, Mr. Jenkins, I'm glad you asked that question because one of the things that really had me confused as I listened to Mr. Avant present this proposal, I said, "You know what? If we had a tax election and no public funds could be used for it, that meant as superintendent, I wouldn't be able to even go out to a school because I'm on the payroll of that school system. I wouldn't even be able to go speak at anything on that, because I would be using time that should be diverted into something else. It got, to me, to be even that ridiculous as to how would you delineate as to what exactly was public funds in this.

[Previous Question ordered.]

Closing

Mr. Avant Mr. Chairman, fellow delegates, I don't have any doubt but what I could pass this amendment if I would just exempt school boards from it. But what's good for levee boards, what's good for city councils, what's good for other governmental subdivisions is good for school boards. Now I can't for the life of me, understand somebody coming up here and saying, "We never have done and never contemplate doing what you intend to prohibit, but don't prohibit it." I doubt the sincerity of that type of logic. As I have attempted to make abundantly clear, I see absolutely nothing wrong in operating in the way Mr. Sutherland said that the Orleans Parish School Board operated when he was a member of it. Matter of fact, I think they are under a duty to do that. But I think when they go beyond that and they start using public funds, whether it be a school board or any other public body, for political purposes to politicize a certain particular pet proposition that some politician may have, and they are using your tax money for it, when you may be against it that that's wrong.

Now all this amendment does it say that you shall not do that and the legislature shall provide the ground rules. It's simply like in the Constitution of 1921 when they put in there the language "gambling is a vice and the legislature shall pass laws to suppress it." Now the legislature passed laws suppressing gambling as a business. They never have passed any law that suppressed gambling in your own home where it wasn't conducted as a business. I say that we need to go on record.... the people of this state, I am sure, would want to go on record as saying that "thou shalt not use my tax money to promote political propositions or candidates." Once we have gone on record and said that, I'm perfectly willing to leave it up to the legislature in its wisdom to provide the ground rules. The key language is "urge any elector to vote for or against any proposition."

Now, the legislature can put some meat on those bones. The legislature can say what is legitimate

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Mr. Roy Well, it would still be...well, then we'll have to put it in somewhere else if you want it. We don't...not...this doesn't take it out if that's what you are talking about and we didn't intend to take it out. But, we haven't put it in anywhere else and I don't know if it belongs in this section or not. Perhaps, it does.

Mr. Lanier Well, are you aware that the present State Board of Registration has the absolute right to remove registry of voters in the parishes with...at will? Are you aware of that?

Mr. Roy Yes, I am. I don't think this takes that away. In other words, Walter, the way I look at it, what we don't put in here, constitutionally, in the schedule will be any constitutional amendment that we don't propose or we don't specifically take out of the '21 Constitution will go into the schedule as statutory law, as I understand it. You'd still have the State Board of Registration and it would still have the powers that it's got right now.

Mr. Lanier Well, are you aware of the fact that I proposed to give up State Board of Registration as presently constituted that type of power? Are you aware of that?

Mr. Roy No, I'm not.

Mr. Lanier Do you feel that type of power should be given to an individual or a group to remove a registrar of voters at will?

Mr. Roy No. I really don't because I always think that you have to remove for cause if you're going to remove anybody.

Mr. Lanier What would be the position of your committee, if any, on that particular point?

Mr. Roy I can't answer for everybody else, but if you came up with an amendment that says that you could only remove a registrar for cause I'd be much in favor of it because I don't believe any human being should ever be removed from office without cause.

Mr. Roemer Mr. Roy, you, in answer to these board of registration questions which I think were very appropriate by Mr. Lanier, you said well, if it's not in the new constitution then we...it's automatically in the statutes, wasn't that your answer?

Mr. Roy I said, that it's my opinion that in the end what we don't necessarily retain in this constitution will have to be relegated to the schedule in some way or another.

Mr. Roemer Ok. Now, following that same logic, why do we have to have this section at all? Why don't we regulate the whole thing in the schedule? I mean, what have you done with this section, that can't be done in the schedule?

Mr. Roy Mr. Roemer, that's my opinion and you're on your way to convincing me that I'm probably wrong about it.

Mr. Roemer Thank you.

Mr. Roy In fact, you have convinced me. I just got in from talking to a group and I'm not with it yet. Any other questions?

Mr. Stagg Mr. Roy, one of the questions asked, I think by Mr. Lanier, had to do with what happens to the Board of Registrations and I'd like to ask you: if in the Section 12 of the Executive Article where there was added, "there shall be a Department of Elections and Registration headed by the state commissioner of elections, who shall administer the laws relative to the custody of voting machines and voter registration, the commissioner shall have such

powers and perform such duties as may be authorized by this constitution or provided by statutes." Do you believe, Mr. Roy, that the provisions for this kind of powers in the Department of Elections and Registration does effectively do away with the Board of Registration?

Mr. Roy I don't know why we are talking about the Board of Registration when we're talking about registrars here.

Mr. Fayard That wasn't my question, Mr. Roy. My question is, that under almost every other elective office or constitutional office that we have provided for, we have at least established a term even for Supreme Court justices and also the governor; did your committee give any study or any thought to establishing a term for the office of Registrar of Voters?

Mr. Roy Well, we did, we felt that since registrars were a peculiar animal in a way that they come about---they are appointed by the local governing body, the parish governing body that we didn't want to impose upon that body a set period of time and they had historically served during the time of good...you know, of good service and what have you and you just couldn't get into it. We didn't want to put him back in politics.

Amendment

Mr. Poynter Amendments sent up by Delegates Ginn and Reeves as follows:

Amendment No. 1. On page 2, delete lines 30 through 32, both inclusive, in their entirety, and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following:

Section 11. The governing authority of each parish shall appoint a parish registrar of voters, whose compensation, term of office, powers and functions, and bond shall be provided for in the election code. No person shall serve as registrar of voters who has qualified as a candidate for elective office."

Explanation

Mr. Ginn We're concerned here with your parish registrar of voters and we had been working on it and we hope we have the solution here, we hope. First of all, we're talking about the governing authority of the parish shall appoint the parish registrar of voters. We wanted to solve the problem of the governor appointing them or a board of elections appointing them or something of that nature. We wanted to somewhat remove possibly politics from this, so we want the parish governing authority appointing the registrar of voters as you have it now. Compensation we felt like if we left the compensation up to the legislature maybe, someday, in the future we might have somewhat of a degree of uniformity statewide. But, we wanted the legislature to have that responsibility. Now, your term of office. This was somewhat of a little problem we had to discuss it. First of all, we're concerned with their lifetime jobs and now you're going to remove these people and how long they are going to serve. We just felt like the legislature ought to set that term of office so you would know when that term would end and you would know the political aspects of this job. There again, your election codes set up by the legislature would handle his term of office. Your powers and functions are self-explanatory. Now, about bonds, we had to include bonds in here because anytime you have a public official, who has to sign checks; handle the money, you have to have that bond provision in there...it is necessary---and there again, your election code in that sentence. In this last sentence of this amendment, "No person shall serve as registrar of voters who has qualified as a candidate for elective office." Well, we saw a problem here of...of a conflict of interest and...several candidates running for office who may be friends of the registrar of voters; --- all kinds of prob-

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involved there; -- helping friends out. We didn't want to see that so we had to put this prevention in there. That's about the size of it. I'll be glad to yield to any questions.

Questions

Mr. Denberry Mr. Ginn, my question really is in connection with the last sentence. Who has qualified as the candidate for elective office, when? Suppose a man previously qualified, and ran and was defeated and subsequently was appointed registrar of voters; he would come under the prohibition there because he has qualified as a candidate.

Mr. Ginn Well, that may be the case, but we just didn't...or it might not be the case it depends on the time of when the man qualified.

Mr. Denberry Well, that's what I'm asking you. In other words does this mean that if he is qualified,...if he has qualified then at that point he can no longer serve, or does it mean if he ever in the past qualified?

Mr. Ginn Well,...it's just a prevention to keep him from running for office at that time, that's what we are trying to accomplish.

Mr. Denberry I'm sorry, but I did not understand your provision for removal. You said something about it, but I didn't quite follow what you said. What provision is there for removal?

Mr. Ginn That would be taken care of in the election code, but my comment was that...the legislature would set that term of office and you would know when that man could be removed, if it was necessary. Really, it was a nonchalant statement.

Mr. Rayburn Mr. Ginn, don't you think you ought to use words you say here "who has qualified"? Don't you think you should add there, "during the time he's a candidate"? If I read this right, once you qualify you're dead forever. Would be in the registrar of voters I mean now, if you would put in there while as a candidate, but you just say "no person shall serve as a registrar of voters who has qualified as a candidate."

Mr. Ginn Yes, sir.

Mr. Rayburn Which means in my opinion, that once he's qualified he could never serve.

Mr. Ginn I understand that and I agree with you. I think that it's just wordy and that we need to rearrange.

Senator Rayburn, I understand your question. Now, I think we could solve it by saying instead of who has qualified, but while qualified.

Mr. Rayburn And to do it? Because I got a registrar of voters that qualified courts when he went to the Supreme Court, he got unqualified, but he's still a registrar, and I don't want to knock him out.

Mr. Perez Mr. Ginn, I'm generally in favor of your amendment, but one of the things that troubles me is where you say that these various terms of offices, etc., shall be provided in the election code, and it may be a number of years before we actually adopt an election code. Would you object to saying "as provided by law" instead of "in the election code"?

Mr. Ginn Well, I would hope that the legislature would adopt an election code in a timely manner. I think that's the best way to handle it. I think that's the best way to handle it.

Mr. Ginn Yes, sir. I think that's the best way to handle it. I think that's the best way to handle it.

Mr. Ginn Yes, sir. I think that's the best way to handle it. I think that's the best way to handle it.

Mr. Ginn Yes, sir. I think that's the best way to handle it. I think that's the best way to handle it.

question; wouldn't it be simply better just to use the last sentence that's in the original proposal that would accomplish where it says "no person shall serve as registrar of voters while a qualified candidate for any elective office." Rather than the last sentence that you have in your amendment.

Mr. Ginn We're doing that right now. Your remarks were taken care of.

Mr. Ginn Yes, sir. I think that's the best way to handle it. I think that's the best way to handle it.

Mr. Abraham David, what have we really done here with your language that's any different from the language in the committee proposal?

Mr. Ginn Well,...

Mr. Abraham All you've really put here and just said that the...added the words "compensation term of office" which is in the election code which might be the law and the committee proposal says as provided by law and the law could be the election code there.

Mr. Ginn Well, we just thought we were trying to clean it up a little bit. There's several different people who had objections and this was more or less a compromise amendment. If that will answer your question. We did add a few things here.

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen of the convention, while I'm generally in favor of the purpose of the amendment, one of the things that bothers me very much is, first, the fact that we may never get an election code. Unless this is contained within an election code these various things could not be taken care of. But, even more important than that, is that when you say "whose compensation, term of office, powers and functions and bond shall be provided for in the election code," that, then would not allow the legislature to provide a method whereby the registrar may be removed because these things are exclusive, and I don't believe that you could provide for other things. So, I'm generally in favor of the purpose of it; but unfortunately, I think that the amendment is not properly prepared.

Questions

Mr. Ginn Yes, sir. I think that's the best way to handle it. I think that's the best way to handle it.

Mr. Ginn Yes, sir. I think that's the best way to handle it. I think that's the best way to handle it.

Mrs. Warren Mr. Perez, you just said something about the election code. I think that's the best way to handle it. I think that's the best way to handle it.

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Mr. Perez Well, that's very difficult to say because the election laws of this state are very complex. It took to revise such things as our Criminal Code and other various codes that we have, many, many years. I don't know how many years it will take to revise all of the election laws of this state. It's a very complex subject matter and it could take many, many years.

Mrs. Warren Maybe, you should have got up here a little bit earlier.

Mr. Gravel Mr. Perez, were you here last week when we adopted the first section of this article that provided for the election code which also -- were you here then on Saturday, when that particular provision that was adopted on Friday, was amended to state that there should be...there would be provisions in the election code for permanent registration?

Mr. Perez Yes. Well, I wasn't here on Saturday, but I'm familiar...

Mr. Gravel You're aware of it? All right, sir.

Mr. Perez That those provisions were adopted. My only point here being that the way that this particular amendment is phrased, that it may be many, many years before we adopt an election code. I'm afraid of what may happen in the meantime with respect to the Office of Registrar of Voters.

Mr. Tate Mr. Perez, as an expert in local government, do you have any concern at all...

Mr. Perez Judge, any person who claims to be an expert, is a damn fool. I don't claim to be an expert in anything.

Mr. Tate Well, I claim you are anyway. I guess I'm a damn fool.

Mr. Perez I am what, sir?

Mr. Tate An expert.

But, do you have...the present constitution provides not only that the registrar can't serve while he's a qualified candidate, but that he cannot be a candidate for twelve months after he leaves office. Does it concern you at all that, that former constitutional prohibition is not maintained? Under the current basis was it...it's a sensitive office, one we want to keep out of politics...

Mr. Perez Under this particular provision, the legislature could deal with it, under this particular amendment. The present law says no registrar of voters shall be elected or appointed to any other office within twelve months after vacating that of registrar.

Further Discussion

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, I rise in opposition to this amendment primarily because of the provision in here that mandates the legislature to fix a term of office. Now I know that may sound rather strange to most of you because the obvious feeling that every delegate I guess, would have without maybe giving it too much consideration, is that some term of office should be fixed for registrars of voters. Let me suggest to you that there's a very many...there are very many valid reasons why they should not be the law. In the first place, there is no provision of the law at this time that fixes a term of office for registrars of voters. At the present time, they can be removed by the Board of Registration under the provisions of Article VIII, Section 18, of the constitution for no cause at all. There's no guarantee that they are going to continue in office for any specified period of time. But, they at this time can even be removed for no cause at all; which many of us,

of course, feel is a very, very bad situation with respect to the law. What I think we've got to do if we do anything at all, about registrars of voters, is to maintain them in somewhat the same position that we maintain our civil service employees; our school teachers under the tenure provisions that we've adopted into the statutes, and give them protection and insulation from arbitrary action by the appointing authority. That is, generally the police jury, and which, of course, constantly and consistently could make political demands collectively and individually upon the registrar of voters, if his office is permitted to be politicized. Now, I would suggest to you that we give consideration to the election code a section or a part that would perhaps determine whether or not we've gone as far as we need to go by adopting the initial section that we adopted in this article; wherein we said, that the election code would provide for permanent registration. Certainly, a provision with respect to permanent registration could, and should encompass in the election code a section or a part that would deal with the appointment, qualifications, period of time which they would serve, and things of that nature; insofar as they relate to the Office of Registrars. So, I would urge that we defeat this amendment for the reason that it can cause more problems than I think its authors seek to cure by the amendment, and that we give consideration either to deleting the entire section, or perhaps, coming up with some amendments that would meet the very many serious objections, that have been already urged to the proposal. If there are no other speakers, Mr. Chairman, I would...

Questions

Mr. Kelly Mr. Gravel, am I to understand that your basic objection to this amendment is the phraseology in their term of office?

Mr. Gravel Yes, Mr. Kelly, because that's the... those are the words that would really politicize the office.

Mr. Kelly Well, are you aware that assuming that this amendment does pass, which I do favor, I have an amendment to this amendment that would delete those words?

Mr. Gravel If you had that amendment I could then...if we cleaned up the last sentence to say what I know the authors intended it to mean I think, then we would have a provision that would be satisfactory.

Yes, Mr. Chairman.

Mr. Roemer Mr. Gravel, as I understand it then, you are opposed to this amendment, basically, because of that phrase "term of office." Is that correct?

Mr. Gravel That's correct. Yes.

Mr. Roemer If that is deleted then, how will there be any provision for removal and in whose hands will that be?

Mr. Gravel I think we would have to say that that should be...how they should be done, either in this section or leave it up to the election code to provide for removal.

Mr. Roemer Well, I noticed that you had an amendment earlier which said that "the governor shall remove." Are you going to push that amendment on us?

Mr. Gravel Well, knowing that you are not going to support it, for that reason, Mr. Roemer, I might withdraw it.

Mr. Roemer Well, do you have any alternatives to a term of office, then, if it's not going to be the governor?

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Mr. Reeves: Now, I want to ask you a question. You said that you took the Mike earlier that you had supported this amendment? Wasn't that the impression you gave me?

Mr. Gravel: Now mean the Ginn-Reeves amendment?

Mr. Roemer: Yes.

Mr. Gravel: No. I didn't say that I would support it. I thought that this was an alternative that would be... should be presented to the convention. I so stated up here at the huddle too, Mr. Roemer. Let me make it clear, so there is no question about it. I was asked to prepare the amendment that was distributed to all of you by the registrars of voters, who are here today, and asked me to prepare and submit this amendment. They are not unwilling to go with the amendment as proposed by Mr. Ginn and Mr. Reeves. I think that it presents some problems, and I'm saying so.

Yes, Mrs. Warren.

Mr. Warren: Mr. Gravel, do you know what I said? I said that I was not going to support the amendment. I said that I was not going to support the amendment. I said that I was not going to support the amendment.

Mr. Gravel: That's the present law.

Mrs. Warren: Right. Now, you said that amendments could be drawn. The only objection that you had was a term of office. What about drawing up an amendment and letting the author of it with you, that there would be cause for them having to be removed... That nobody should be able to remove just "blank blank" just because I don't want you any more.

Mr. Gravel: Well, in the amendment that I have distributed--which we haven't discussed yet--I make the provision that there could be removal by the governor for cause.

Mr. Reeves: (interjected) ordered.]

THE SPEAKER

Mr. Reeves: Let us get this situation into perspective. What we intended to do was to establish that the parish registrar of voters shall be appointed, first of all, by the governing authority of the parish. Then, we did not want to get involved in this situation of removal by the governor, or removal by the parish governing authority. We felt, first of all, that the governor should have no business removing, by the simple fact of him not wanting a registrar of voters in a parish. We felt that this should not be done. We did, also, feel at the same time, that the registrar of voters should not be placed at the discretion... of his removal placed at the discretion of the police jurors, who appointed him in the beginning. We felt that this could possibly bring an alliance between police jurors and registrars of voters. So, simply, we said that the compensation, the term of office, the powers and functions, and the bonds shall be provided for in the election code. We attempted to leave it up to the Louisiana Legislature--who we trust--to establish an election code, to set forth the term of office, the compensation, and the powers and functions of the registrar of voters. We do not want to establish the registrar of voters as a lifetime position. I feel very strongly against this. I will look any registrar of voters in the face and say, "It is wrong for a man to be appointed to an office by a group of police jurors and then to sit there, forever and ever, until he dies, without being able to be removed by anyone." This is against the democratic process of which I so very strongly am in favor of. It's wrong for an individual to be appointed and not be able to be removed. But, at the same time, it's wrong for that individual to be appointed

to the office by a group of police jurors and then to sit there, forever and ever, until he dies, without being able to be removed by anyone. It's also wrong for the police jury to get excited and mad at the registrar of voters who might not have happened to have supported him in the past election. Then by vote of--in my particular parish, we have twelve police jurors--so, by a vote of 7 to 5 a registrar of voters could simply be removed arbitrarily by the police jury, if you had the provision of local government having the authority to remove the registrar of voters. I think this particular proposal of David Ginn's and mine is a compromise. We leave it up to the legislature to provide for the compensation. This compensation must be provided for by the legislature, for they are the ones that put up the money. Then, the term of office is provided for by the legislature through the election code. The powers and functions, and the bond is also provided for by the legislature through the election code. We feel this is a good compromise. We do not want to establish the registrar of voters as an autonomous power of body not able to go back to the electors in the parish, not able to go back to anyone, just simply sits there. If you remember back, we eliminated the Louisiana Supreme Court from having a fourteen-year term. We provided more... better representation, we gave them ten-year terms. If you give the parish registrar of voters a lifetime term or terms... putting no term of office in there, or provision providing no term of office. What you are doing is giving the parish registrar of voters a lifetime term. This is not what I want. This is not what I think the people of the State of Louisiana want--for this is not democracy. Democracy provides that the people that are appointed or elected should have the right to come before the people. We feel that this is a compromise. I hope that you will vote for it.

Question

Mr. Cannon: I have two questions, Mr. Reeves. Did you know that in your... using the word in your proposal "term of office"--whether it be for four years, ten years, ten years, or what--you have political power in the office in that this particular individual is going to have to get reappointed once during that period of time, you know, as versus an unlimited term. Did you also know, that under your proposal--let me get this real close--that doing a good job in the office of registrar of voters for a certain number of years really, in effect, becomes cause for removal?

Mr. Reeves: Mr. Cannon, you are so politicalized. I say to you... Come to Winn Parish and find out about politics. We just appointed a new registrar of voters, and it was an excellent job of politics.

THE SPEAKER

THE SPEAKER

Mr. Tobias: Mr. Chairman, fellow delegates, I want to say to you... I want to say to you... I want to say to you...

On page 2, delete lines 29 through 32, both inclusive, in their entirety and on page 3, delete lines 1 and 2 in their entirety.

THE SPEAKER

Mr. Tobias: Mr. Chairman, fellow delegates, I want to say to you... I want to say to you... I want to say to you...

THE SPEAKER

Mr. Tobias: Mr. Chairman, fellow delegates, I want to say to you... I want to say to you... I want to say to you...

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the provision as it is now written, "The governing authority of each parish shall appoint a parish registrar of voters." If we remove this entire paragraph and put nothing in its place, then you are not going to have your local people making this appointment possibly. You are locking it in by at least putting something into this constitution concerning the governing authority of the parish making the appointment. If you take it all out, you put it all in the hands of the legislature. The minute you do that, they could come up, they could create some special commission, they could put the entire thing in the hands of the governor or any other political body, concerning the appointment of your local registrar of voters. For this reason, I recommend and wholeheartedly ask that you vote this amendment down.

Further Discussion

Mr. Stagg Mr. Chairman and fellow delegates, I'll make as short a speech as Max Tobias made in presenting his deletion amendment. If you have been for local government and for home rule since we have been in this battle, then your vote is against the Tobias amendment. The registrar of voters ought to be appointed by the local government. Do not follow Mr. Tobias' advice and leave this thing twisting in the wind. I urge you to vote against the Tobias' amendment and leave the registrar of voters to be appointed by the local government.

Further Discussion

Mr. De Blieux Mr. Chairman, ladies and gentlemen, I rise in support of the Tobias amendment. There is nothing whatsoever in Mr. Tobias' amendment that says the local governing body can't appoint the registrar. The only thing is, is what it says that it's the election code it can be provided for if we delete this section. They can determine upon what terms and conditions the local governing body can appoint the registrar, how he can be removed, safeguarding him from being removed because of anything of that sort. I'm not saying that we can go ahead and handle that, as well as all of the rest of this proposal by the election code. We don't need to clutter up the constitution with a lot of meaningless—you might say—legislation, and that's what this amounts to. I ask for your support of the Tobias' amendment.

Further Discussion

Mr. Perez Mr. Chairman, ladies and gentlemen of the convention, in my judgement the provision that the governing authority of each parish shall appoint a parish registrar of voters is a must provision in our constitution. Let me, if I may, go back a little bit in history and see whether we might recall some of the problems and abuses which we had in the city of New Orleans—many years ago—when the governor had the total authority to appoint the registrar of voters. That was, probably, the biggest political plumb of any of the gubernatorial appointments. It was subject to a great deal of political abuse. In my judgement, we must, we should put a provision in the constitution which assures that the registrars of voters will be appointed by the governing authority of the various parishes. Now, I will be coming with an amendment—right after this—which will provide that whose appointments, powers and functions and other provisions with respect to such office, shall be provided by law. I believe this will pretty much take care of the objections to the last amendment, but at the same time, assure that the governing authority of each parish would appoint the registrar of voters, which would get away from the possibility of a statewide abuse by some governor, some day, trying to control registrations all over this state—which in my judgement—is a very, very dangerous thing for us to subject the people of this state to. I, therefore, urge that you reject the amendment. I will offer an amendment shortly afterwards—hopefully—when this is defeated, which I

hope will straighten out the problem.
Judge Tate.

Questions

Mr. Tate Mr. Perez, when your amendment comes, do you anticipate that we would keep on as statutory material in the schedules, the present method, which has worked pretty darn well?

Mr. Perez Well, the present method, yes. I believe that under the amendment, itself, it says "shall be provided by law," would include the present provisions, until such time as it might be amended.

Mr. Tate This would be kind of a transition material that we could keep on when we get to that transition business.

Mr. Perez That's correct. That would do away with the possibility that it would wipe out the present law, when you said it must be put in an election code.

Further Discussion

Mrs. Warren Mr. Chairman and delegates, I was really wanting to support the proposal by the committee. Mr. Gravel brought up a very interesting question which kind of disturbed me a little bit—where the registrar could be removed without cause. Mr. Perez brought a question into my mind that the court might be years coming into effect, it was going to take so long. So, I'm not wanting to leave all of this up to court. I think that we should defeat this amendment. I think it's too important to just let the registrar of voters just be hanging loose, and we don't know which way he is going. I think we should come up with an amendment. I think if Mr. Perez is going to draw an amendment, I would like to get with him and put in there that this person could be removed by the local governing authorities that appointed him, but, for a cause. I'm going to ask you to defeat that amendment.

[Previous Question ordered. Record vote ordered. Amendment rejected: 5-98. Motion to reconsider tabled. Motion to temporarily pass over Section 11 adopted: 84-15.]

Reading of the Section

Mr. Poynter "Section 12. Commissioners and Poll Watchers
Section 12. The legislature shall provide for the selection of commissioners and poll watchers at every election."

Explanation

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, this is a rather simple section. I don't think that it bears the responsibility of the time of this convention by way of explanation. I think that it is rather clear. It leaves the old regulation relative to this proposition up to the legislature. I, at this time, would move for the adoption of this section.

Questions

Mr. Bergeron Representative Jackson, I'm looking at the way Section 12 reads, "The legislature shall provide for the selection of commissioners and poll watchers at every election." Does this mean that at every election they will have to provide for a different way of selecting commissioners and poll watchers?

Mr. A. Jackson I don't think so. I think it simply means that at each election you will have commissioners and poll watchers.

Mr. Bergeron Is this the present language we now

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slightly. I believe; it makes it mandatory. In the present constitution the whole business of commissioners is not mandated.

Mr. Bergeron O.K. Well, in the content of them and I am in agreement with you--it's just that the last few words are a little confusing, but, I won't object to it. Thank you.

Mr. Brien Mr. Jackson, don't you think it should also be carried in the election code?

It could possibly be handled in that fashion.

Mr. Jenkins Mr. Jackson, isn't it true that one reason that it is necessary to include this section in this article is the fact that this does mandate that we will always have poll watchers who are, of course, are chosen by the candidates to safeguard the candidate's interest at an election? That we will always have poll watchers provided at election and this mandates the legislature to provide a system for choosing such poll watchers.

Mr. Jackson That's correct.

Mr. Jenkins And, also, isn't it true that it also provides that we will have a system of commissioners--and this means--that commissioners can be selected in some fair and reasonable way. But, we must have commissioners and poll watchers and the election code cannot do away with those things. Isn't that correct?

Mr. A. Jackson The section mandates commissioners and poll watchers.

Amendment

Mr. Poynter Delegate Sandoz sends up amendment Page 3, delete lines 3 through 5, both inclusive in their entirety.

Explanation

Mr. Sandoz Mr. Chairman, fellow delegates, I don't want to sing the same song over and over again. But, again, I submit that the provision of Section 12 can be better covered by the Legislative Act in the election code, it is no necessity to include this section in this constitution.

Questions

Mr. Jenkins Mr. Sandoz, at present, candidates for office--any candidates--can demand that he has in the election place a poll watcher. This provision mandates such a provision in the future, because it...poll watchers is a term of ordinance that says we will have poll watchers. Isn't it a good protection to have, so that no election code in the future could say that maybe only commissioners, for example, could be present at the polling place? Isn't this a good protection for us?

Mr. Sandoz Mr. Jenkins, I certainly am in favor of commissioners and poll watchers. But, I have enough confidence in the legislature to feel that they will provide for both in the election code.

Mr. Sandoz Mr. Jenkins, I certainly am in favor of commissioners and poll watchers. But, I have enough confidence in the legislature to feel that they will provide for both in the election code.

Mr. Sandoz Mr. Jenkins, I certainly am in favor of commissioners and poll watchers. But, I have enough confidence in the legislature to feel that they will provide for both in the election code.

Mr. A. Landry Hasn't it been your experience to find that even though poll watchers are chosen, unless they are very close to the candidates, they are not effective?

Mr. Sandoz That's been my experience.

poll watchers, commissioners, etc., and all we are of the statutes. Is that correct?

Mr. Sandoz You're right, Mr. Landry.

Mr. Burson Following Mr. Landry's question, it is true, is it not, that there is no provision in the present constitution requiring poll watchers?

Mr. Sandoz That's my understanding, Mr. Burson.

[continued.]

Mr. Poynter "Section 13. Election Returns
Section 13. Returns of elections shall be made to the secretary of state."

Mr. Vick Mr. Chairman, fellow delegates, the present constitution provides that "The returns of elections for all civil officers for a commission by the governor shall be made by the secretary of state, unless otherwise provided in the constitution." This is a rewrite and it is a technical, a highly technical area. This was rewritten after many hours of consultation with the secretary of state and his assistants. Perhaps Mr. Landry if there is an amendment to delete this section, perhaps Mr. Abrose Landry could enlighten us as to the variances--since there are no representatives here from the secretary of state on this floor I don't believe--the variances that the secretary of state receives from the various parish executive committees in this state. They do vary the purpose and intent of this section to make them uniform and to insure that they are promulgated by the secretary of state. If there are no questions, I move the adoption. I will yield.

Question

Mr. Lanier Delegate Vick, the Executive Article that we adopted in the original Section 7, thereof, we have "Under the powers and duties of the secretary of state that there shall be a Department of State, headed by the secretary of state, who shall be the chief election officer of the state and shall prepare and certify the ballots for a uniform manner to promulgate all election returns?"

Mr. Vick You read it correctly, Mr. Lanier.

Mr. Jenkins Mr. Vick, isn't there an important distinction in this section, however, because we are dealing with all civil elections--including bond elections, constitutional amendments, home rule charters, etc.--and not just elections for civil officers. We are providing here that returns in all elections, not just elections for candidates, or elections of executive officers, not just statewide officers, but all elections, the returns of them shall be made in a uniform manner to the secretary of state.

Mr. Sandoz Mr. Jenkins, I certainly am in favor of commissioners and poll watchers. But, I have enough confidence in the legislature to feel that they will provide for both in the election code.

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law and say that on every bond issue, on every local election and so forth, that instead of the local committees promulgating the returns of the elections, it will be done by the secretary of state?

Mr. Vick Well, Mr. Perez, Mr. Bellar, who is one of the attorneys for the secretary of state was present during our deliberations and it was at his insistence...not at his insistence, but at his suggestion and admonition that this language be included. Now, you may find it objectionable and, of course, if you do then you are entitled to attempt to change it.

Mr. Perez My question is whether this makes a change in the present law because of the fact that your returns of elections are promulgated either by your parish committee, or by your senatorial district committees, or by your congressional districts committees, or the various other state central committees and so forth. In this case, it would appear to me that you are talking about the promulgation by the secretary of state of every election in the state under all conditions and that's what concerns me about the language.

Mr. Vick That's what it says and you may be correct that it may change the law.

Mr. Burson Mr. Vick, I haven't looked at the law in this matter as closely as you all have. But, I'm under the impression, now, that the procedure followed on bond and tax elections would be that the tax embodied be it--drainage districts, school board, city council, or police jury would be responsible for promulgating the returns. In many cases, most cases, probably the secretary of state would have nothing at all to do with the promulgation of at least that type of election as distinguished from an election where you had contesting candidates, or in a party primary, or otherwise, or a general election. Did you all look at that aspect of it?

Mr. Vick As I said in answer to Mr. Perez's questions, Mr. Bellar after hours of consideration on the wording...on just how the wording should be...how precise the wording should be to achieve what was desired. This was what the committee came up with. Now, if it does do violence to the promulgation in bond elections that is inconsistent with the Constitution of 1921, I can't answer that. I don't know that.

Mr. Burns Mr. Vick, in following up Mr. Perez's question. I take it that under this wording that every parish election, every judicial district election, every senatorial district election or whatever the nature of the local election, that the local election commissioners would take all of their election returns, their tally sheets and so forth, and send them directly to the secretary of state at Baton Rouge?

Mr. Vick It is my understanding, Mr. Burns, and I must certainly...prepared to stand corrected if I am wrong, is that the preliminary returns are, you know, always in order. In other words, obviously candidates and those interested in particular issues want to know what the returns are. But, promulgation means official--the seal of the secretary of state goes on the official returns. They may vary one or two votes, or three or four, or a dozen or so but...it doesn't mean that the candidates would not know as soon as the returns were added up. Promulgation is a term of art.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Sandoz]. On page 3, delete lines 6 through 8, both inclusive, in their entirety.

Explanation

Mr. Sandoz Mr. Chairman, fellow delegates, the

only justification that I heard in the explanation of this section from Mr. Vick was that it would provide a uniform method of promulgating these returns. Well, my answer to that is that this can be done by statute or in the election code. Hence, there is no reason to include this in the constitution. Furthermore, I want to point out that when we adopted Section 7 in the Executive Department, we have a provision in there concerning the powers and duties of the secretary of state that "He shall prepare and certify the ballots and promulgate all election returns and amendments to the election law, except voter registration and custody of voting machines. I submit that this section as in a number of these others can be deleted, without in any way affecting the constitution.

Questions

Mr. Rayburn Mr. Sandoz, the bond commission met today and approved some eighteen or twenty little special drainage districts, and water districts, and various districts. Two weeks ago, we approved forty-four, I believe, and two weeks before that, thirty-nine. In the parish, Mr. Martin has not had anything to do with these returns from these elections. But, if I read this right, in the future he would have to, would he not?

Mr. Sandoz That's correct.

Mr. Rayburn Do you have any idea how much that would cost for him to promulgate every little election, in every little area, in every little district in this state?

Mr. Sandoz You, probably, are the best qualified one here to estimate that, Senator.

Further Discussion

Mr. A. Landry Mr. Chairman, fellow delegates, I'm not here to tell you to vote for or against the amendment. But, I would like to explain to you the need of uniformity. Just like some time ago, we took the Judiciary Article and we amended it to give uniformity for office hours for the clerk of court. I supported that amendment. We need uniformity in election returns, and I will tell you why. As most of you know, the secretary of state does promulgate the returns of the state officials. The Local Democratic Executive Committee promulgates the returns of the local officials. The republican party promulgates the returns of their candidates. The State Central Committee in an election for committeemen, they in turn, promulgate the returns of the election. In the last election, for instance, the local committees can make the corrections if the commissioners have made an error on the tabulation sheet. But, the secretary of state receives these tabulation sheets from the commissioners--maybe this is a legislative matter. We have a lot of legislators here today, so I thought I would talk to them, also, today. The fact remains that once the secretary of state receives the tabulation sheets, he promulgates the returns of the state officials. Three days after the election, the clerk of court in the presence of the committee, the candidates, retabulates the votes--makes any corrections that there be made of their tabulation sheets. The local committees must take the corrected tabulation sheets in order to make their promulgation. However, there is nothing in the law for us, whereby we must send to the secretary of state a corrected tabulation. For instance, in the last election, we had two gentlemen who ran for State Central Committee, our voting machines showed Mr. Dave Robichaux as the winner. Thirty days after the election, the Democratic State Central Committee met in Baton Rouge and after the committee has met and adopted the returns of the election--without reading them--the gentlemen went out to check and found out that Mr. O'Quinn had won the election. Of course, the time had elapsed within which for him to file a lawsuit---thank goodness both of them were good friends, and automatically Mr. O'Quinn

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doesn't always work that way. For instance, do you realize that if the commissioner in the returns of an election for a statewide office would falsify the returns, they were could very place a man in the second primary who doesn't deserve to be in the second primary. He wouldn't find out about it unless he had someone to check every voting machine in the state on the Thursday after the election, that the secretary of state had promulgated honestly, but he only promulgated from the returns of the commissioners, and he has false returns. No matter what you do, I'm asking you that somewhere down the line, that you have some uniformity, some check and balances, whereby the corrected returns—after they have been checked by the clerk, by either the chairman of the Democratic Committee, or the President of the board of supervisors of election that some returns be forced to be made to whomever promulgates the election returns, to make sure that all candidates got a fair count. That's all I ask of you.

tabled.]

Reading of the Section

Mr. Poynter "Section 14. Registration Challenges Section 14. A person may contest in the district court his denial of registration, or denial of his request to have removed from the rolls any names placed or standing thereon illegally, which cases shall have preference over all others.

Explanation

Mr. Guarisco Section 14 merely is a codification of the present constitution insofar as a person having...guaranteeing a person to have standing, to purge the rolls of illegal voters and to contest an election. It's in the present constitution under Article V. We changed it somewhat in that in the present constitution you had a right to trial by jury, and they had the amount of the jury, etc. We culled most of that out and leave the procedure to the legislature. Also, it says that they will 'have preference over all others,' which means, simply in lawyers' language, that it is a summary proceeding and due to the nature of elections, it would be important that it would be brought up at a very early hour so that the election could be decided very swiftly, or the rolls could be purged between elections and that only those persons entitled to vote would vote. So, it only guarantees a standing. We may have standing, probably through the Bill of Rights, but that would have to be tested by the courts. I yield to any questions.

Questions

Mr. Rayburn Would you mind defining for me, in your opinion, the words "district court"? How far could you contest it? You just...I use here "district court." Would you define "district court" for me, in your opinion?

Mr. Guarisco Well, Mr. Rayburn, the district court is certainly the first court of record in our judicial system. Its functions are set out in our judicial Article that we had previously adopted. I don't think that any way you could interpret the first court of record being the last court that would ever hear the contested election. I think you can go through the judicial process once you get into court the first time.

Mr. Tobias Mr. Guarisco, following up Senator Poynter's question, it says a person may contest in the district court...is go to?

Mr. Guarisco Well, I...Mr. Tobias, you know...

not illumination.

page 3, delete lines 9 through 14, both inclusive in their entirety.

Explanation

Mr. Sandoz Mr. Chairman and fellow delegates, I agree with everything that's in this section; but I just submit that it should not be in the constitution, that it should be in our election code. I urge the adoption of the amendment deleting the

Mr. Denney Mr. Sandoz, are you keeping the same record of speakers with regard to this article that you have normally kept?

Mr. Sandoz I might spoil my image. I decided not to keep a record on it.

Other Discussion

Mr. Jenkins Mr. Chairman, delegates, this section gives our citizens a very important right that they have had for many years. A right which persons in virtually every other state have. Really, it would be a travesty to take it out of the constitution because it is, of course, possible that the legislature would not provide for this situation, and that the standing of an individual to go to court in this case would be denied. The right to register and vote would be really quite meaningless if a person had no procedural way to enforce that right. This section gives him a way. If he is denied the right to register, then he can go to the district court, and in a summary proceeding have his right decided. Also, it preserves the integrity of his own right to vote because your right to vote doesn't mean a whole lot if there are a lot of other people whose names are on the rolls illegally. So, this gives him the right to go to district court and have those names purged, if they are there illegally. If you look at Article VIII, Section 5 of our present constitution, you will find the equivalent present provision. It says, "Any person possessing the qualifications for voting prescribed by this constitution who may be denied registration shall have the right for relief to the district court having jurisdiction of civil causes for the parish in which he offers to register. Said court shall then try the cause giving it preference over all other cases before a jury of twelve, nine of whom must concur to render a verdict. This verdict shall be a final determination of the cause. The trial court, however, may grant a new trial by jury. In no cases shall any appeal lie or any other court exercise the right to review." We have simplified that language, taking out the unnecessary details, but preserving for our citizens their right to go to court and in a summary proceeding have standing to sue, to either be registered, if that's the case they are raising, or to have illegal names removed from the rolls. My goodness, let's don't take this basic protection. It would be a shame if our citizens somehow lost this right. So, I urge the amendment.

Mr. Kilbourne Mr. Jenkins, the reason the article... person would have the right to make a contest... somebody else's right to be on the registration roll? In other words, would without being a qua...

Mr. Sandoz That would be a question for the

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that. Of course, I suppose that we could say any elector, but when we are talking about the right to challenge your denial of registration, well, you see you might not be an elector if you hadn't been allowed to register. So, we have to give that right to every person.

Mr. Rayburn Woody, believe me, I'm not trying to pick this thing, but I did promise to try to submit back to the people a little shorter constitution. I notice here where you say at the bottom, that "these cases shall have preference over all others." Then, right in the next section which we are not discussing now, but you are saying if a person gets elected or an election has been contested, you make no provision. They can wait a year to decide it. I wonder what the rush is.

Mr. Jenkins Well, we are continuing present law in that regard, "Sixty." The present law says "giving it preference over all other cases." We are doing that because it is right before an election and there are names standing on there illegally, you'd want to immediately have them removed so that you wouldn't have a fraudulent election. Or, if your election were coming up and you weren't allowed to register, well, you would need to act immediately in order to be able to vote. So, that's why the provision has been in the constitution and should continue to be.

[Previous Question ordered. Record vote ordered. Amendment adopted: 77-21. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 15. Election Contests
Section 15. The legislature shall provide by law for the judicial determination of contested elections".

Explanation

Mr. A. Jackson Mr. Chairman, ladies and gentlemen, this section makes no changes in the present law. It tracks the language as it is included in the present constitution. I move for the adoption.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Sandoz]. On page 3, delete lines 15 through 17, both inclusive, in their entirety.

Explanation

Mr. Sandoz Mr. Chairman, fellow delegates, again I have no objection to the language contained in here, that "the law shall provide for judicial determination of election contest," but I submit again, that this should be a part of this election code and not a part of this constitution.

Question

Mrs. Warren Mr. Sandoz, I might not get a chance to ask you this question. Have you gone through all of the rest of the proposals and have you decided what we are going to delete? So, if you have, let me know and I...I get to be studying to find out what is in it before I get to it.

Mr. Sandoz I haven't done that yet, Mrs. Warren.

Further Discussion

Mr. Jenkins Mr. Chairman, let me read you the present constitutional section. It's found in Article VIII, Section 12, Election Contests. It says: "The legislature shall provide by law for the trial and determination of contested elections of all public officers, whether state, district, judicial, parochial, municipal, or ward except governor or lieutenant governor, which trial shall

be by the courts of law, and of the domicile of the party defendant." The thing that this section would accomplish is to make sure that contested elections will be decided by the courts of law because it says "judicial determination of contested elections." It would not allow an election commission, it would not allow some public official such as the commissioner of elections to determine them. It would not allow the legislature, say, to vote on it, or something like that. It requires that the courts of law make this determination, and we thought that the reason that that was included in our 1921 Constitution was that the drafters of that document felt that these contests should always be determined by judges who are elected by the people—not appointed by someone—who have access to the jurisprudence in the area and can make a determination based on law and facts rather than some political whim. I think we need this section, and I urge the defeat of the amendment.

[Previous question ordered. Record vote ordered. Amendment adopted: 70-26. Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 16. Election fraud
Section 16. No person shall register and vote in more than one place, nor offer or receive anything of value in exchange for a vote, nor engage in any other form of election fraud. The legislature shall enact laws to suppress such activities, and penalties in such cases may include suspension of the right to vote and hold office for a period not to exceed five years".

Explanation

Mr. Jenkins Mr. Chairman, delegates, the equivalent section in the present constitution is Article VIII, Section 23. It discusses corrupt practices, disenfranchisement, grand jury investigations, district attorneys. We have taken that section shortened it considerably. I suppose the most important part of this section is the second sentence. It is absolutely necessary, if you are going to disenfranchise people for election fraud. The present constitution says that "whoever is guilty of election fraud—buying, selling votes, things of that nature—shall be forever excluded from the right of suffrage and from holding any office of trust or profit under the United States, or rather under the laws of this state." The committee felt that a permanent exclusion of someone from voting or holding office was, perhaps, too great a penalty to impose for election fraud. However, we thought that if someone is so disrespectful of the electoral process that he engages in such activities, that he ought to be denied the right to participate in such activities for a set period of time. We arbitrarily established five years as that period. It is particularly important that this section not be deleted. If this section is deleted, it will be impossible, under this constitution, to disenfranchise anyone or prevent them from holding office if they have engaged in election fraud—if they have bought or sold votes. It will be impossible because the right to vote is guaranteed under the Bill of Rights and a person is restored to the right, the full rights of citizenships, under the Bill of Rights, after completion of serving a term for a felony or a misdemeanor. So, you can see unless we here, say that people can be disenfranchised for a fixed period, they will not be able to be disenfranchised by any election code or provision thereof. So, if you think that buying and selling votes, vote fraud, is so serious that people ought to be denied the right to vote for a period of five years, you will have to adopt this section or it...or something equivalent to it. An election code could not legally provide that protection of the other voters of the state. So, I urge the adoption of this section.

Questions

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these words mean: "No person shall register and vote in more than one place?"

Q. That means that just by the district
that I live in, I can only vote in one place, that you can only...

Mr. Perez Do you mean at the same time?

Mr. Jenkins Well, of course, at the same time.

Mr. Perez: All, my problem again is, and I'm reading the words, is whether once you registered in one place you may remain registered that way for life, or if the interpretation is otherwise, since we have no problems... we have no residency requirements now, that it means that a person may register in one place, and then move to another place, and the next place the day after. This first clause concerns me very much. Would you explain it?

The first step is to register in more than one place. For example, if you are a resident of New York City, you should register in New York City and in the state of New York. This is because the state of New York requires that all residents register in the state, even if they are also registered in a local jurisdiction.

Mr. DENNIS: All right, the right to vote of the 14th Amendment, Section 19, as I understand it, the right to vote may be suspended while a person is under an order of imprisonment for conviction of a felony. Therefore, if the legislature determined that vote fraud was a felony, you would achieve the same result that you just spoke of, would you not?

Mr. Jenkins Well, Moise, you could only do it for the period of his imprisonment, you see, or his probation. You...he may get off with a suspended sentence, for example, but he would still be able to hold office and still be able to vote. So, the only way that we can prohibit him from voting and holding office if he is not actually in or under probation or parole would be with this constitutional provision.

I know a lot of people weren't really listening. The only way we can disenfranchise people for election fraud--buying and selling votes, voting in more than one place, etc.--is by this constitution. And we specifically provide in this constitution that that right can be suspended for a period of time, such as five years. If we delete it, an election code cannot possibly, legally provide such a thing. I think that will be the best way to give a person the right to register and vote even if he has been convicted of such a thing as this unless he is actually in prison or under parole or probation. So, we need this section if we are going to have this constitution under the best of circumstances. So I urge the adoption of this section.

Mr. Poynter Amendment No. 1 [by Mr. Sandoz]. On page 3, delete lines 18 through 25, both inclusive, in their entirety.

Explanation

I agree entirely with the language of this section, however, I cannot envision the legislature authorizing persons to register and vote in more than one place. I submit again, that this is the type of

provision where sufficient additional details could be supplied by the legislature, and should not be recommended to the public.

Mr. O'Neill Well, Mr. Sandoz, then you disagree with the explanation of how it came to be that the right to vote? Do you disagree with the explanation?

Mr. Sandoz I didn't disagree with the explanation, I agree with the language and just submit that it should better be handled in the legislative act or in the election code and not in this section, separately.

Mr. O'Neill Well, Mr. Sandoz, the explanation that the legislature couldn't do anything about part of this because under the right to vote, was an absolute right. Without this section, legislature can have no...nothing to do with. Do you disagree with that?

Mr. Sandoz: I disagree with that.

Mr. O'Neill Well, would you explain why you

Mr. Sandoz Well, because I just don't agree with it. I think the legislature can do something with it. I just disagree with that interpretation by Mr. Jenkins.

Mr. Fayard Mr. Sandoz, isn't it possible for the legislature to provide that it shall be a felony for anyone to buy or sell votes or engage in such activities, and if convicted, then wouldn't that person be disenfranchised from voting?

Mr. Sandoz: That would be correct, sir.

Mr. Abraham. The article in the Bill of Rights reads that "every citizen of the state upon reaching eighteen years of age shall have the right to register and vote, except that this right may be suspended for persons who are insane and judicially declared mentally incompetent or for any other order of imprisonment for conviction of a felony." Now, it does not say, "except as otherwise provided in this constitution." Even though we might provide in this constitution here for penalties or what have you, it does not say "except as otherwise provided in this constitution." It says "except as otherwise provided in this constitution."

Mr. Sandoz: That's a good question, Mr. Abrams.

Mr. Willis: Mr. Sandoz, I register at the courthouse and I vote at the National Guard Armory in front of my home. Now, it says "no person shall register and vote in more than one place." So, how am I going to vote...I can't vote at the courthouse; I'm not in that precinct. Don't you think that limos?

Mr. Sandoz: You'll have to ask Mr. Jenkins that.

Mr. Jenkins: Mr. Sandoz, isn't it true if the legislature provided that election fraud was a felony and a person were convicted of election fraud, that he would only be disenfranchised and forbidden from holding office while he was in prison for conviction of that and while on probation or parole? If he were given no prison term, for example, he could immediately begin holding office and voting again and would not be disenfranchised for five years, isn't that true?

[illegible]

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Mr. Sandoz Well, it would be a question as to which provision would control as the courts would interpret it.

[Previous question ordered. Reconsideration refused. Amendment adopted. "A-1". Motion to reconsider tabled.]

Reading of the Section

Mr. Poynter "Section 17. Code of Elections Section 17. The legislature shall provide for a code of elections".

Mr. Chairman, I might say at the outset there is a committee amendment to delete this section.

Mr. Henry Committee amendment to delete the section. That's the one that's already been taken care of. Right, Mr. Jackson? Provided for that in the first section. This is an amendment to delete Section 17.

Amendment

Mr. Poynter Amendment sent up by Delegate Alphonse Jackson.

Amendment No. 1. On page 3, delete lines 26 through 28, both inclusive, in their entirety. Of course, Mr. Sandoz had an amendment just like it.

[Amendment adopted without objection. Motion to take up other orders adopted without objection.]

Announcements

[T Journal 615-616]

[Adjournment to 9:00 o'clock p.m., Wednesday, October 10, 1973.]

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Mr. Chatelain Mr. Chairman and fellow delegates, I'm not aggrieved; I'm happy and enthusiastic this morning. Yesterday morning at seven o'clock a.m. I met with my mayor and city councilmen in the city of Lafayette, for the second time in three weeks, at their request, and they were very happy to give me their time. Since I sat on the Local and Parochial Government Committee, they are very happy and enthusiastic and accept the proposals as they came out of this convention. I want to bring you good tidings from south Louisiana. They are one hundred percent for the new proposal, and I feel sure they'll do everything they can to help sell this constitution. Thank you.

UNFINISHED BUSINESS

PROPOSALS ON THIRD READING AND FINAL PASSAGE

Mr. Poynter Committee Proposal No. 33 introduced by Delegate Alphonse Jackson, Chairman on behalf of the Committee on Bill of Rights and Elections, which proposal is a substitute for Committee Proposal No. 20, also by Delegate Jackson, on behalf of the committee, and other members of that committee.

A proposal making general provisions for elections.

The status of the proposal, at this juncture, is that the convention has adopted, as amended, a new Section 2, has adopted the proposed Section 3 and proposed Section 6, as amended, has deleted all other sections of the proposal, save for Section 11, which has been passed over. In addition, there are amendments pending at the desk to propose the addition of new sections to the proposal.

[Motion to revert to Section 11 previously passed over adopted without objection.]

Amendment

Mr. Poynter Amendments proposed by Delegates Kelly, Ginn, Roemer, Gravel, and others:

Amendment No. 1. On page 2, delete lines 30 through 32, both inclusive, in their entirety and on page 3, delete lines 1 and 2 in their entirety and insert in lieu thereof the following: "Section 11. Subject to and not inconsistent with the provisions of this constitution, the governing authority of each parish shall appoint a parish registrar of voters, whose compensation, removal from office, bond, powers, and functions shall be provided for in the election code. Upon qualifying as a candidate for public office, the registrar of voters shall forfeit his office. No law shall provide for the removal from authority of a registrar by the appointing governing authority."

Explanation

Mr. Kelly Mr. Chairman, ladies and gentlemen of the convention, I refer you to Section 11, as it is written here. Quite frankly, there are about three issues involved in this section. One is, who is going to be the appointing authority? Quite frankly, I think there is very little controversy among the authors of the different amendments up here, concerning that issue. My amendment would state that "the governing authority of each parish shall appoint a parish registrar of voters." All right, not further inconsistent with Section 11, as written by the committee, it would say that "is compensation, bond, powers," and so forth, would be determined by law." Now, we do say "the election code." Quite frankly, I admit this could be an issue, but I won't argue that issue at this particular time. I mean "law," "election code"...it's six of one, half a dozen of the other, as I see it. Now, the same language or the same concept was attempted to be traced, that is in the committee proposal, trying to make it clearer. We simply said that "upon qualifying as a candidate for public office, the registrar of voters shall forfeit his office." Under the committee proposal, it would say, "No person shall serve as registrar." This could possibly mean that he would take a leave of

absence, and yet, not, in fact, forfeit his office at that time. The last statement in the amendment being presented is probably the key issue. That is, that no law shall provide for removal from office of a registrar by the appointing governing authority. Now, under Section 11, as it's written now, there is no reference to removal from office. There is no reference to a commission, as we have in the 1921 Constitution, and I refer you to the 1921 Constitution—I believe it's Section 8... Article VIII, Section 18—which deals with a commission which sets up a three board panel of the governor, lieutenant governor, and speaker of the house, which provides for the removal of the registrar of voters. Now, the primary purpose for putting this last statement in there, "no law shall provide for removal from office of a registrar by the appointing governing authority," is to, at least, try and take some of the local politics out of this office. I can foresee that where you've got a registrar of voters that is absolutely and completely controlled by the appointing authority, then you've got problems. I can also see, that where, let's suppose that an election is coming up, and the police jury or the appointing authority, whoever it might be, has the absolute right to remove that particular registrar, they can go out there, they can even make this a campaign issue. Let's suppose you've got one in a particular parish, say, you've got a family that is politically strong, and it's real important to have this particular family, or this particular group backing you. Well, I can foresee where four or five candidates for one of these local offices would go to this particular group, four or five of them, or however many it would take to be a majority, especially if they have the power of this removal, and say, "all right, now, you all come on and go along with us on this thing, and we'll make ole brother-in-law over here, the registrar, a free voter." What we have done in this amendment is to try and prevent a situation like that. It says that "the legislature is going to provide for removal from office, with the limitation that no law will provide for the removal from office by the same authority that does the appointing." It's that simple—you're either for the concept or you're against it.

Questions

Mr. Abraham Mr. Kelly, this last sentence is what I was concerned about. Maybe I am unaware of what the problems may be, but what is wrong with treating the registrar of voters, the same as any other parish employee, in that...the example you used, that if you voted for me, we'd make someone's brother-in-law the registrar of voters. Well, doesn't that same philosophy apply to all of these various parish jobs? Couldn't they do the same thing with the other parish jobs? Why the exception, or why is there a problem with the parish registrar of voters?

Mr. Kelly Well, I can just foresee that...something that is as basic as voter registration, I mean I don't like to think of someone who is handling the registration books of a particular parish, who is in charge of registration of voters in a particular area, is an ordinary common employee of a particular political subdivision. I think it's a very important job, and I mean, I can't even equate this to an employee of a political subdivision, Mr. Abraham.

Mr. De Blieux Mr. Kelly, I just want to be sure about this division. Do you mean that, if a registrar of voters qualifies for office, then he is no longer a registrar, and even though that he gets defeated, he cannot assume the position as registrar, unless he's reappointed, or something of that sort?

Mr. Kelly That's correct, Senator. In other words, I don't think that this stops him from ever becoming the registrar of voters again, assuming that he was defeated, but during his period of qualification and during his political race, he would have to forfeit the job. Now, if we assume that he was defeated, and he can come back and obtain the removal process

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Mr. Perez Well, it leaves the same problem as we had yesterday when that particular provision was defeated and creates additional problems. Yes. That's correct. I therefore ask you to defeat the amendment and adopt the amendment I will offer in...after this amendment.

Further Discussion

Mr. Stagg Mr. Chairman, I have only one point that I wish to make in the...when Mr. Kelly was at the microphone. The last sentence of the Kelly amendment leaves, I think, this whole matter kind of hanging there kind of twisting in the wind, to use a phrase of recent origin.

When we were interested in the office of the legislative auditor, in order to protect the office of legislative auditor from an excessive zeal in the performance of his work and the numbers of people he might make unhappy, while he was appointed by the legislature by a majority vote, he could only be removed by a two-thirds vote of both houses of the legislature. I would like to suggest to Mr. Kelly and the authors of these various amendments, perhaps the basis for a compromise, I seek to have the registrar of voters appointed by the local governing body. Could it be possible that you would find acceptable that he could only be removed by that local governing body, for cause and by a two-thirds vote of the members...all of the members of the local governing authority. It would seem to me that if a local governing authority by a two-thirds vote...or if you even want it worse than that, make it a three-fourths vote...I submit that it's a possible way to solve this dilemma and have it all to be taking place on the local scene that you could not dispossess a registrar of voters of his office, except by a two-thirds vote of all of the members elected to the local governing authority. I suggest that to Mr. Kelly or the authors of these others amendments as a possible way of solving this end of the dilemma caused by the last sentence in the Kelly amendment.

Further Discussion

Mr. Roy Mr. Chairman, ladies and gentlemen of the convention, I rise in support of the amendment and want to discuss with you what I think are some errors of law that Mr. Perez and I have on his interpretation of it.

If Mr. Perez is right, if it takes an election code to be enacted by the legislature before we can move forward with this particular plan, if the present law will not go into the schedule until such an election code is enacted, then that first amendment that you all passed...or the first section that you all passed to this entire Elections Article doesn't make any sense either. If you remember, we said...or you said "that there shall be an election code provided by the legislature which will embody permanent registration" and a couple of other things. Now if the same reason obtains, then it obtains in both places. Until that election code is enacted, is it Mr. Perez's real argument that we will not be able to vote in the future?...That you won't be able to register people? Certainly not in my opinion. You will still have the same laws that will go into the schedule. So don't be misled by something that I think was probably an erroneous statement on Mr. Perez's part. I don't mean that he...I'm just thinking that he...he has a difference of opinion with me as to what he's saying. I don't think that this amendment at all precludes future registrars from being appointed just as they have been in the past until such time as a Code of Elections is adopted. Because if it does, if he's right, well then, every...no one is going to be able to vote in the future, because we said in the first section of this particular article that you've got to have an election code embodying the principles of permanent registration as well as registering voters and how it shall be done.

So I rise in support of the amendment. I think it's good. I think the last sentence is what really is needed. I don't think we should subject officials

in the category of registrars of voters to the whim and caprice of a police jury or other type of governing body. A two-thirds vote suggested by Mr. Stagg is not, in my judgment, a valid one, because what happens on that real local level, of course, is that you may have an entire new police jury coming into being, or two-thirds of them may be new and may have had a deal that they would take the registrar of voters out as soon as they got in there.

So, I always am for "cause" before you can remove any person from office.

Questions

Mr. Lanier Mr. Roy, the language that's in this amendment, and the language that's in the provision you refer to, about the enactment of an election code, it does not set a specific period of time, does it, within which the legislature must enact the election code?

Mr. Roy No, it doesn't. My point is that, though, that it does say that the election code will embody permanent registration as well as other methods of voting, etc. All I'm saying is that this one says no more or less except it gets a little more specific. I'm saying that the schedule will have to take care of these things until such time as the election code is adopted.

Mr. Lanier Well, let me get to the next point, then. Is it possible, then, that there could be, say, a two-year time lag between the date of the adoption of our new constitution and the time that the legislature promulgates the election code?

Mr. Roy Enacts?

Mr. Lanier Yes...or enacts. That is possible, isn't it?

Mr. Roy It's possible.

Mr. Lanier Now, would you agree that this language that says that "the compensation, removal from office, bond powers and functions, shall be provided for in the election code" precludes the legislature from so providing by general law?

Mr. Roy You mean at this time?

Mr. Lanier This language in this amendment.

Mr. Roy No, I think an election code is a general law. I think that they're both the same. Whether you call a set of papers two inch...an inch thick an election code or whether you have only two pages in it, if you call it an election code I think that's enough. I think it's a general law.

Mr. Lanier Are you trying to say that what we have on the books right now is an election code?

Mr. Roy If the legislature chose to call it an election code, it would be an election code. That's all I'm saying. The term "Election Code" is like the Code of Civil Procedure. I think that the legislature could provide by general law for venue in a certain other section, and not necessarily deal with the Code of Civil Procedure.

Mr. Nunez Mr. Roy, do you believe...in the last sentence, Mr. Roy, "No law shall provide for the removal from office of a registrar by the appointing governing authority." Do you believe we should ever forbid the appointing governing authority from removing the people that they appoint? For instance, let's take in the event that sometimes in the future it might be advisable that the legislature provide for removal procedure of the registrar by the appointing governing authority. Do you think we should leave this sentence in there?

Mr. Roy I think for this particular...yes.

Further Discussion

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[Amendment withdrawn.]

Mr. Denney Mr. Kelly, in listening to the various remarks that have been made, I noticed that several people said that they thought this was a good idea provided the removal was for cause. Now, why would you not, in amending this, insert those words when you have removal? Removal without cause, whether it be by the legislature, by the governor, by the board of elections, or by the local governing authority, I think is what your amendment is aimed at.

Mr. Kelly I would have no objection to it...I mean I don't want to just keep amending the thing up here without the copies being redistributed. But I mean I have no objection to that as far as inserting the words "removal from office for cause." I have no objection to that whatsoever. I think that's what we are really getting at.

Amendment

Mr. Poynter All right. Mr. Kelly also does want to make that last change that's suggested by Mr. Denney. So the amendment would read as follows:

Section 11...Instructions stay the same...
"Section 11. Subject to and not inconsistent with the provisions of this constitution, the governing authority of each parish shall appoint a parish registrar of voters whose compensation removal from office for cause, bond, powers and functions shall be provided by law."

Pick up with the next sentence on the next line:
"Upon qualifying as a candidate for public office, the registrar of voters shall forfeit his office. No law shall provide for the removal from office of a registrar by the appointing governing authority."

Questions

Mr. Lanier Mr. Kelly, why do you feel it's necessary to put this language at the beginning "subject to and not inconsistent with the provisions of this constitution"?

Mr. Kelly Walter, I was hoping you would ask me that question because you and I fought a big battle here about two months ago. I don't want to get mixed up with the commissioner of elections and the secretary of state again.

Mr. Lanier Now, let me ask you another question. We've been tacking this phrase onto a lot of other provisions that we've been going through. What would happen if two of these provisions happen to be inconsistent with each other? Which would prevail?

Mr. Kelly I don't think--and I have read the provisions relating to the powers, functions, and duties of the secretary of state and of the commissioner of elections. They are not in conflict at this time. In order to remove that its article would not create any conflict in the Executive Article, that is the specific reason for inserting the words "subject to and not inconsistent with the provisions of this constitution".

Mr. Landrum Mr. Kelly, the last sentence, why do you find it necessary to place it.

Mr. Kelly All right. Reverend, as I said, I think now we have boiled this thing down so that is really probably the only issue left in the amendment. It's just...I mean that is the gut issue, as I see it. My primary reason for putting that in there is to assure that the registrar of voters in a particular parish is not completely embodied within the local politics of that particular parish. I gave a hypothesis in my opening...when I was explaining the amendment whereby I tried to explain this. I said at that time that I could foresee a situation where every time you had a new police jury or a new appointing authority--whether or authority it might be--come into power that this office would be up for grabs. I meant there would actually be politics...

say, "alright, you do this and you do that, and we'll see that you get elected registrar of voters." I just think that this is too important an office to be in the absolute control of politics like that, if you want to say it that way. I think that what we are doing here, we are saying that "the legislature shall provide for removal from office for cause." Then, we are putting a check and balance on this power. We're saying, "now you can provide the method and procedure for removal for cause, but you can't put it right back into the hands of the same authority that appointed the man, or in the complete discretion or control of the appointing authority." That's the real issue right there.

Mr. Landrum Mr. Kelly, this way. Are you saying, in effect, that the only individual who can remove the registrar of voters would be the governor because, well, then if not the governor, who else could do it?

Mr. Kelly Quite frankly, Reverend, it's not saying that at all. I meant the language just simply says that the "removal from office for cause shall be established by law". The legislature could go to any method, procedure, a distinct commission on the side. That's the way it's handled right now. That's what I'm afraid everyone doesn't understand. They keep talking about waving red flags and everything in the face of local government. Let's understand one thing. Local government doesn't have this power at this particular time. I might add that the registrars of voters in this state don't want to be placed into this political situation.

Mr. Landrum Now, he can be removed by the governor. I'm just trying to find, under the...as it...as the officers, the registrars operate now, they can be removed by the governor under the present law.

Mr. Kelly No, sir. Article VIII, Section 18 provides that a commission composed of three members, the governor, the lieutenant governor and the speaker of the house have the powers of removal.

Mr. Landrum Well, of course, the last one I saw removed was by the governor. But, I'm trying to find that other agency, or that other individual, that other officer who can remove them except--unless it's the local governing body or the governor himself.

Mr. Kelly Well, I think that we need an independent commission somewhere besides from the appointing authority to take care of the removal situation. Reverend, in other words, I don't think we necessarily want the governor. I don't want the governor to have the complete control of removing. I know you don't. But at the same time, I don't want the same governing authority that made that appointment to have the uncontrolled discretion to effect that removal, either. That's the basis of this last sentence.

Mr. Wattigny Mr. Kelly, I'm for your amendment. The only thing that enters my mind is why we have stayed away from a fixed term on these appointments.

Mr. Kelly A fixed term?

Mr. Wattigny Right. For the registrar.

Mr. Kelly Well, quite frankly, I cannot support a fixed term for a registrar because I think that is really going to put it into politics then. In other words, it's going to be...I can foresee that as being like a sup...local superintendent of education or schools--whatever the appropriate name is where every so often, I mean, maybe he would run. I mean he would actually be running a little race...two or three guys. I mean they would be vying for this position within the police jury or the appointing authority.

Now, I mean if we are going to go so far as to have the terms for registrars of voters, then you may as well go on and make the office a parish-wide elected office.

Mr. Willis Mr. Kelly, putting aside...I want to project Mr. Lanier's question on target. Putting aside the question of the commissioner of elections and the secretary of state and posing this question to have it confront the first section of this article, notably "that the legislature shall enact an election code", does not the subjugation clause, that is the first independent clause, "subject to and not inconsistent with...", all that blah, blah, does not that suppress and subordinate the first section...I mean this section to the first section...and depletes this section of total efficacy?

Mr. Kelly I don't think so, Mr. Willis. It is my opinion that it does not.

Mr. Willis Well, we have in the first section that "the legislature shall enact an election code". Then we have into this section--let aside the commissioner of elections and the secretary of state--Now, we have in this section, "subject to and not inconsistent with"...so that means that the legislative should enact an election code...

Mr. Willis I'm coming to the question. I'll let him put a question mark to it, your...Mr...Your Honor... Mr. Chairman.

Does not, do you see the thrust of my question?

Mr. Kelly I see the thrust of your question. I think you and I just disagree upon what you say it does and what I say it does.

Mr. Willis Well, it's a wholesome disagreement.

Mr. Rayburn Mr. Kelly, I've always tried to be fair; I don't know I have always been. But I read here where you say "no law shall provide for the removal from office of a registrar by the appointing governing authority."

In your opinion, if the governing authority of your parish or my parish passed a resolution and the existing law that we now have in effect stays in effect, what do you think if they passed a resolution unanimous that the registrar of voters is drinking on the job, he hasn't opened his office on time...he, therefore, resign that you remove him. Do you think that the resolution would have any bearing on whether he would be removed or not?

Mr. Kelly Yes, sir. I certainly do.

Mr. Rayburn All right, well do you think then this language is really going to do what those registrars think it's going to do if those local governing authorities don't want him?

Mr. Kelly Yes, sir, I still think it is, Senator, and I'd like to explain by saying, in a situation where you've got dereliction of duties and functions, and you've got a unanimous resolution passed by the appointing authority, under this...the language of this last sentence, whoever is going to have the removal powers--and these removal powers will be established by the legislature--I think if this resolution is presented to that removal authority, I think they are going to take the advice of it. But yet, at the same time...I mean if two or three guys on the police jury or the appointing authority happen to just get "hacked off" at the present registrar of voters, because his politics are maybe not quite in line with theirs. Well, then, I don't think that they should be able, under a resolution, or an ordinance or anything else say, "All right, straighten up or get out."

Further Discussion

Mr. Perez Mr. Chairman and ladies and gentlemen, I regret having to get up here again, but because the authors tried to so-called clean it up; they have, to a certain extent, cleaned it up; but also, it is still a mess.

But I must answer this question with regard to "subject to and not inconsistent with the provisions of this constitution". When Mr. Kelly referred to the duties of the secretary of state--the duties of the secretary of state have absolutely nothing to do with the registration of voters. With respect to...the commissioner of elections, all that we have in the constitution is that the commissioner of elections will administer the laws relative to voter registration. It leaves it all up to the legislature to determine what those powers and duties and functions are. So that basically, I can see absolutely no reason for the words "subject to and not inconsistent with" when the legislature has all authority with regard to the commissioner of elections and his duties and they would have all authority with respect to the method by which, and the duties of a registrar of voters.

Again, I think that's a bad part of the amendment I think that we should not, absolutely in the constitution, preclude the possibility, under certain circumstances, of local government removing a person from office. Because you have the problem, in addition to the problem of the possibility that a governor may not want--or whoever they...in whoever's hand they put the removal powers in Baton Rouge--they may not want to remove somebody from office who, in fact, is not doing a good job, but local government may want to remove him. I think that we should leave this up to the legislature where they'll have more opportunity to study the matter and come up with a well reasoned approach to this question of the registrar of voters.

I, therefore, urge you again to defeat this amendment and to adopt the amendment that I'll offer.

Questions

Mr. Roy Mr. Perez, under what you are urging, could the legislature, for certain parishes and local governments or political subdivisions, allow them to remove either a case or without cause, and yet for others have some statewide type law? Couldn't that happen, too?

Mr. Perez Well, the only problem we have in our constitution at this time is the question "what is a general law," and the question of whether or not it is a general law, like say, it takes over five hundred thousand. But, under either amendment, that situation would prevail.

Mr. Roy Well, even if they put it in the code that for St. Bernard Parishes, and others, that they could remove by the local government without cause, but in all other parishes that they have to be for cause by some other body?

Mr. Perez That's the problem we have now with regard to what is a general law and the question of classification. But, I say again with respect to either amendment, whether it be the Kelly amendment or the amendment that I would propose, the situation would prevail.

Further Discussion

Mr. Kelly Mr. Chairman and ladies and gentlemen, I think that the Kelly amendment has been amended and resubmitted to you. At the very outset, let me say this: that on yesterday the official representatives, as I understand it, of the Registrars of Voters...I think that the Kelly amendment and the concepts expressed by it, and authorized the statement to this convention that they support it; I want to make that statement to you. Their primary concern and wish is that Mr. Lanier and ladies and gentlemen, is that the governing authority of the parish, of course, should make the designation or the appointment of the registrar of voters. But, I think that the Kelly amendment, which says that the registrar of voters, then you are placing that responsibility on the legislature to deal with respect to his each and every action. It's only Mr. Lanier's amendment that says that the

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rule, and let's don't talk about what may be the way to proceed and the way to remove these people from office. It's just this simple: do you want to remove the registrar of voters away from and insulate him from petty, partisan, political activities throughout the entire course of the conduct of his office? If you leave with the governing authority, the possibility—or even leave that possibility with the legislature—that the registrar of voters can be removed by the governing authority then you make him beholden to the people that he has got to be accountable for insofar as his job is concerned. You're not ever going to get him free from political activity. Right now, the registrar of voters, in most instances, with rare exception, has been operating on a merit system type of employment or civil service type of employment. I think it's important to get away from the concept of home rule when we're talking about the principal official in the parish who is in charge of the very basic that leads to all elections, and that's registration. That doesn't relate just to the elections in the locality. That registration roll relates to all elections that are conducted throughout the State of Louisiana. So let's don't be misled about the fact that here we are taking something away from the governing authority. We're not doing that. The governing authorities are not in any different position insofar as the appointive power is concerned. Let's make sure that when the legislature does provide the method for removal of registrars of voters that it's done in any way that the legislature, in its wisdom, thinks it should be done, and for cause, but not by the appointing authority that would be in a position, I think unreasonably, if it wanted to on an individual basis and on a collective basis, dictate to the registrar of voters. I urge that you support the Kelly amendment that is before you as it's been amended. Thank you very much.

Questions

Mr. Burson Mr. Gravel, don't you think it would be wiser to leave this decision of removal to the legislature, so that in the event that a particular scheme did not work out, they could come back and change the statute to meet whatever problems arose?

Mr. Gravel That's exactly what we're doing, Mr. Burson, except that we're saying that the appointing authority shall not be the removal body or the removal medium by which that's done. That's the only thing. We are leaving it to the legislature with that one restraint and restriction.

Mr. Burson My second question would be—I know that you were involved in the events of that time to some extent—don't you share my concern that we might have a replay of what we had during the Rainach era when the pressure for improper registration practices came in some cases more from the state level than it did from the local level, if you leave this, say, just totally divorce it from the local unit?

Mr. Gravel That has nothing whatsoever to do with it, Mr. Burson. That particular unhappy practice and procedure flowed from some constitutional laws that directed that procedure. I don't think that has any bearing on it.

[Pronounced "Louisiana" in French.]

Closing

Mr. Kelly I just have one or two brief things to say possibly reverse just a little Mr. Perez's psychology here on him. Quite frankly, I think we've got a good amendment here now, and he spoke only concerning "the subject to and not inconsistent with," and I've heard some other people object to this language. Then in that case, I suggest that we go ahead and adopt this amendment, and then follow up with an amendment by someone. If you want to remove this language then let's determine the removal of this language at a later date. With

regard to that last sentence, and that is the key to this entire amendment, I think I can say it no better than I had previously stated it; I don't think anyone can express it any better than Mr. Gravel expressed it earlier. Now, Mr. Perez would like for you to go back and defeat this amendment and pick up his. You've got copies of it laying there, and it just simply says that "the governing authority of each parish shall appoint a parish registrar of voters." Now, the key words here are "whose compensation, powers, functions,..." it says nothing about removal from office. It would be my interpretation that the inherent power to appoint would infer the inherent power to remove, so I would say that this would not necessarily...

Questions

Mr. Bergeron Don, to presently remove a registrar, you have the governor, lieutenant governor, and speaker of the House of Representatives, am I correct?

Mr. Kelly That's right.

Mr. Bergeron And any two can remove the registrar. Well, under your amendment with that last—now, this is for my own information—that last sentence... would it leave the authority there?

Mr. Kelly Pardon.

Mr. Bergeron Where would the authority be?

Mr. Kelly It would leave the authority with the legislature to provide by general law the means, methods, procedure, and causes for removal. In other words, the legislature would have the discretion to set forth the procedure, and method, and so forth, of removal.

Mr. Bergeron They could leave it in the hands that it is now where they could change it, is that correct?

Mr. Kelly They could leave it in the hands as it is now. They could establish and entirely separate more independent commission. We'd leave that to the discretion of the legislature.

Mr. Bergeron Thank you, Don.

Mr. Nunez Mr. Kelly, aren't what you and the advocates of this amendment saying that "we trust the legislature, leave it to the legislature halfway; you don't trust us all the way, just halfway; put a prohibition that they can't do certain things." Isn't that what you're saying here?

Mr. Kelly Well, Senator, I have seen the lobbying forces of all sides during this game concerning local authorities, and then the concept of statewide, and so forth; and all I'm saying is that they can set up the procedure and so forth for the removal, but at the same time I don't want to take any chances that this could throw this office right back into a terrible political situation as I see it.

Mr. Nunez So you're saying that the legislature would possibly do that by putting this provision in here, you'll stop the legislature from doing that?

Mr. Kelly That's absolutely correct.

Mr. Nunez You trust them halfway then.

Mr. Landrum Mr. Kelly, don't you know that I mean our local officials as much as I trust the legislature? But, now tell me this, don't you think the power to remove should be by the local governing authority, but also with the understanding that the registrar have a way out that he could appeal his case to the legislature or to the governor?

Mr. Kelly Well, let me say this, Reverend, if you said that he had a...I meant, we haven't provided

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the fact that the other body, a local governing authority, the legislature could possibly set up some initial proceedings still within the local governing authority, but yet at the same time, would have a check and balance. In other words, a final determination would be made by some other independent body. Now, if you go on the basis of saying that the local governing authority can remove for cause, who is going to determine "cause" assuming that we don't spell it out, and let's assume that the legislature doesn't spell it out? That is going to be determined in a court of law, as I would assume. It's my understanding that the local governing authorities of most political subdivisions contribute heavily to the salaries, and so forth, of the judiciary at this particular time.

Mr. Gravel Mr. Kelly, you stated that, in answer to the questions put to you by the distinguished Senator from Plaquemine and St. Bernard, that perhaps you only--Jefferson and part of Jefferson--that you're only trusting the legislature halfway, which I think is a low percentage, but did you detect that there was some limitations of trust on the legislature in the Local and Parochial Government Article, section by section?

Mr. Kelly Slightly, Mr. Gravel.

Amendment

Mr. Poynter In Floor Amendment No. 1, proposed by Delegate Kelly, et al and adopted by the convention on today, strike out lines 8 and 9--if I counted correctly, that last two lines at any rate--of said amendment, strike those two lines out in their entirety and insert in lieu thereof the following: "The registrar may be removed from office for cause, only by the governing authority of the parish."

Explanation

Mr. Cannon Mr. Chairman, ladies and gentlemen of the convention, I think what we had...this last sentence of the Kelly, and others, amendment...this last sentence obviously caused some people, you know, some concern, because it makes this absolute prohibition against the governing authority of the parishes from removing from office the registrar of voters. I strongly disagree with Mr. Kelly about...

Point of Order

Mr. Roy Isn't what Mr. Cannon trying to present us with exactly what we just argued about for an hour and voted on; namely, whether the removal for cause was going to be that way or not?

Mr. Henry No, it's not, Mr. Roy.

Explanation continued

Mr. Cannon Well, I will make it short, Mr. Roy, and I will try to be considerate of this body. I'd just like to draw out a few things. The state puts up half the salary for the deputy; the local governing authority puts up the other half, and may add as much as three thousand dollars a year to the registrar of voters' salary, and quite often pays the full bill of other deputies. I'll give you an example, particularly from East Baton Rouge. Out of an operating budget for the registrar of voters' office of a hundred and thirty thousand dollars, the state only puts up approximately twenty thousand I think we have, in other sections of this constitution, we have removed the appointive power of the governor, and from the state level transferred it to the local level. Particularly, I want to call your attention in the case of the sheriff's. No longer can signatures of twenty-five people prevent him from being appointed, and he's appointed by the governor. I think that's a good example of what we've done in the past, and I think that's what we should do in the future.

the case under...with Sheriff Curoso under the... The one thing that I find repugnant, and I think it has been corrected in the Kelly amendment, these words "at will"...the ability to remove at will" is wrong, and I think we all find that, by Mr. Kelly adding this in here, as I think we all accepted this portion. But, what I'm trying to do is make this thing consistent with the other local government attitudes that have prevailed on this Constitutional Convention. If you look at...in article...in our Local and Parochial Affairs Proposal, Section 17, (2) The local governing authority is going to exercise budgetary and fiscal control over this agency, and that will include the registrar of voters. Like I say, the local governing authority contributes rather heavily to this, and again, I think we've got a situation here that's just diametrically opposed to this last particular sentence, and I would...you know, since we already have debated it rather well, if there are no questions of me, I'd like to call for the question in the interest of time.

Questions

Mr. Fulco Mr. Cannon, isn't the police jury nearest the people within its parish?

Mr. Cannon Yes, sir, through an election process.

Mr. Fulco They are going to have to show responsibility insofar as their action toward the registrar of voters is concerned, isn't that true?

Mr. Cannon Yes, sir, through an election process.

Mr. Fulco And if the registrar of voters has so much influence in the parish, aren't the people in that parish going to be given better service insofar as the police jury action toward the registrar of voters is concerned?

Mr. Cannon I certainly think so, and I think that's exactly the place for it and the purpose of my amendment.

Mr. Fulco Now, wouldn't it be wise then, for the responsibility of removing the registrar of voters, be with the police jury rather than a body or a group of people far away from that local area?

Mr. Cannon I certainly think so, Mr. Fulco, and certainly it should be for cause. It should not be "at will" as the present law exist.

Mr. Fowler Mr. Cannon, you wanted to save some time. Don't you think it would save us a great deal more time if you would withdraw your amendment, because the Kelly amendment was passed by a two to one vote just a moment ago?

Mr. Cannon I certainly think so, Mr. Fulco, and certainly it should be for cause. It should not be "at will" as the present law exist.

Mr. Cannon I certainly think so, Mr. Fulco, and certainly it should be for cause. It should not be "at will" as the present law exist.

Mr. Cannon I certainly think so, Mr. Fulco, and certainly it should be for cause. It should not be "at will" as the present law exist.

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Mr. Cannon I certainly think so, Mr. Fulco, and certainly it should be for cause. It should not be "at will" as the present law exist.

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governing authority, or whether or not this should be vested in whoever the legislature wishes to vest it in, I think that is the question right here.

Mr. A. Landry Well, aren't you definitely aware of the fact that we do not want the appointing. That is sixty-four people in this body do not want the appointing people to have the power of removal? I mean, you are aware of that?

Mr. Cannon I'm aware of the past vote, yes, sir. I'm not aware of that feeling.

[Previous Question ordered. Amendment rejected; 41-59. Motion to reconsider tabled. Previous Question ordered on the Section. Section passed; 89-24. Motion to reconsider tabled.]

Personal Privilege

Mr. Gravel Mr. Chairman, and ladies and gentlemen of the convention, I know that at least two of those additional proposals are proposals by Mr. Abraham, and also a proposal, I think, by Mr. Fulco and many other authors. Each of them seeks to place into the constitution some provision dealing with the "open primary" concept, essentially, dealing with the idea that instead of having a first primary, a second primary, and a general election, that the election code will provide for not more than two elections. We've had several discussions about these particular proposals because, I think, most of the people that have been thinking and working along the lines of the adoption of an election code agree that in principle, without any detail, without any question, there shall be embodied in the proposed election code the idea of two elections instead of three. Along that line, I know, and I'm authorized to state to this convention, that Mr. Jasper Smith, who is one of the coauthors with Mr. Fulco, personally discussed with Governor Edwards over the telephone the essence and the gist of the Fulco proposal, and, of course, I talked with the governor also about the Abraham proposal, so I have been requested to make the representation to the convention that we would like to leave any detail, with respect to this concept, out of the constitution. It could create more problems than it could solve. But the governor is firmly committed to the proposition that he will do all that he can, and exert every influence that he has in connection with the adoption of the election code, as soon as possible, to carry out the commitment that he's already made so many times, publicly, that we will get away from the system of holding three elections. Such as the system that we have known in the past. Now, it was my understanding with Mr. Abraham, with Mr. Fulco, with Mr. Smith that this statement would be made for the records, so there would be no question about it, and that upon the making of that statement and the obvious concurrence of those people who have been talking about this, that they then would not proceed with the detail of their proposals and recommend them for adoption by this convention.

Questions

Mr. Anzalone Mr. Gravel, are you doing this for the reason that you've been over at the Independence Hall now for about two months fighting the governor, and every opportunity...everything that he wants, you voted against it, and now we're here where he may be listening in and you're going to take his side this morning just for that reason?

Mr. Gravel Yes, sir, that's the reason, Mr. Anzalone.

Mr. Smith Mr. Gravel, didn't the governor state also to me over the phone, in case his concept is not in the election code, that he would veto the code?

Mr. Gravel That's exactly what he said—said that this election code was passed by the legislature

that did not embody this concept, he would veto it.

Mr. Abraham I understand that there already is a committee of some sort that is working on this election code. Is that correct?

Mr. Gravel There's a kind of unofficial designation that the secretary of state, the custodian of voting machines, and others who have been primarily concerned with the election process and the legislative council, are to be coming up with the ideas towards the formulation of election code. The reason I say it that way, there's been no formal putting together of a committee, but the principal people, including the representatives of the Clerks of Court Association, are informally working now towards getting ready to recommend the basis for an election code, that's correct.

Mr. Abraham This may be premature, but do you know whether or not that they have been talking along these lines of having, say, just one general primary where everybody runs at the same time, and you vote for the person and then you have one general election? Is this what they're talking about?

Mr. Gravel That's correct, Mr. Abraham, and let me just say this, too, in that regard. We attempted at the very first session of the legislature—after Governor Edwards was elected—we attempted to get everybody together to work up the amendments to the existing law that would permit that, and hopefully it could be submitted to the legislature; and we found that because of some problems in the existing constitution and because of the problems that we have in our election law in Title 18 that it was just not feasible to do it at this time. An effort has been made to try to do it, but we don't really have the vehicle to do it under existing law. We definitely have the vehicle to do it now, as a consequence of the adoption of the first section of this article.

Mr. Abraham Well, as you know, I've discouraged placing statutory material in the constitution, and I would withdraw my amendment knowing, if I am assured that this type of thing will be considered, and we will attempt to have this type of election.

Mr. Winchester Mr. Gravel, would this do away with the Democratic Executive Committee and Republican Executive Committee, as we now know them?

Mr. Gravel Well, now, I don't know whether that would or not. That would not necessarily...in other words, my concept of it would not necessarily preclude the existence of those committees. No, sir. My concept of...we're talking about two elections and we're not talking, at this particular time, about party affiliation and party machinery. But those are the kind of questions we could get into and start arguing about if we get into any detail a whole lot, Mr. Winchester.

Mr. Winchester But, a committee would have to run the election though, wouldn't it, and call it, and so forth?

Mr. Gravel Provision, that's right, for the election machinery certainly is going to have to be set out in the election code.

Mr. Winchester Thank you.

Mr. Stinson But that running would be from Baton Rouge, and not from the individual parishes, wouldn't it?

Mr. Gravel I don't understand your question.

Mr. Stinson The question raised by Mr. Winchester, if the committees would do it, and you said "someone would do it," and of course, anything that's done has to be done by someone, doesn't it? Under this, it would have to be run from Baton Rouge, and not locally, wouldn't it?

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Mr. Stagg: I would like to ask the committee to consider the possibility of having your local committees?

...it could be worked, wouldn't it? ...we have your local committees?

Mr. Gravel: Well, as you correctly say, something's got to be done, and I imagine the election code will provide for it.

Mr. Stagg: I would like to ask the committee to consider the possibility of having your local committees?

Mr. Stagg: Yes, sir. That's right.

Mr. Henry: Will you let the question come Mr. Stagg?
Let's wind this up, gentlemen.

Mr. Gravel: Mr. Stagg wants to know if the Republicans are going to be represented on the committee that's going to prepare the election code. I think that two or three members of the legislature that are Republicans--if we get to it fast enough, they may still be here. I don't know about what may happen after the next election. Besides that, I don't think it's appropriate for Mr. Stagg, who's going to be a federal judge, forever removed from politics, that he should be too concerned about it.

Mr. Stagg: Those three, would be here?

Mr. Gravel: Yes, sir.

Further Discussion

Mr. De Blieux: Mr. Chairman, ladies and gentlemen, I'll make it very short. As I understand, there's a proposal being prepared now to be submitted to the next session of the legislature with reference to the concept of open primary voting. That question has been asked and brought up here quite a bit about the time limit and everything. I just let that information go to you so you can allay your minds with reference to that particular issue.

Further Discussion

Mr. Fulco: I just wanted to say, Mr. Chairman and fellow delegates, that as the prime coauthor... author of the amendment that was to call for an open primary, that in view of the conversations that have existed between us and the governor, and, too, Camille Gravel, that I thought Camille made a very good statement in behalf of the governor. The point is very clear to us, and because of the confidence we have in the integrity and the sincerity of the governor, we do withdraw the amendment concerning open primaries.

Recess

...the committee to consider the possibility of having your local committees?

Amendment

Mr. Poynter: Amendment No. 1 [by Mr. Avant]. On page 3, line 29, add the following:

"Section 18. Prohibited Use of Public Funds
Section 18. No public funds shall be used to urge any elector to vote for or against any candidate or proposition, nor appropriated to any candidate or political organization. However, this provision shall not prohibit the dissemination of factual information relative to any proposition appearing on an election ballot."

Explanation

Mr. Avand: Mr. Chairman and fellow delegates, if you will recall, we had considerable discussion... the committee to consider the possibility of having your local committees? ...they could do that under this provision.

There were two amendments which inserted the word "proposition" in this section. Then, we bogged down on the last sentence, the sentence that would have been added to the section. The sentence as it now reads, I feel, takes care of the objections that certain people had to what we were trying to do. It reads "However, this provision shall not prohibit the dissemination of factual information relative to any proposition appearing on an election ballot." Considerable discussion has been had concerning the amendment; as it now stands, it makes it clear that while public funds are not to be used to urge electors, nothing in this section prohibits the use of those funds for the purpose of disseminating factual information insofar as any particular proposition appearing on an election ballot is concerned. With that explanation, I request your favorable vote on the amendment, and I will answer any questions that anyone may have--or attempt to answer to any question.

Questions

Mr. Derbes: Mr. Avand, I'm completely in sympathy with what you're trying to do, but it strikes... doesn't it seem possible to you that the terminology that you use in the proposal is of such a general nature that a court could construe it to deny the privileges, which you seek to retain, to the very bodies that might come under the scope of the amendment?

Mr. Avand: Mr. Derbes, I've lived long enough to realize that most anything is possible, but I don't think that any fair-minded individual with average intelligence reading this section would do what you suggest. I think that it's perfectly clear what it means, what it's intended, and I think that's the way it will be interpreted.

Mr. Alexander: Mr. Avand, I'm concerned about governmental subdivisions, such as school boards, city governments, and parish governments, where bond issues will be involved--and, of course, sometimes, so far as the state is concerned, constitutional amendments--where there will be opposition. I am wondering where a faction may actively oppose a bond issue for political reasons and buying newspaper ads and urge the voters to vote against it, would this provision permit the governmental subdivision or agency to buy the proper space and tell its story to the voters?

Mr. Avand: Yes, sir. It would permit them to distribute factual information relative to those propositions. Tell the facts. I hope that that would be what they would be telling would be the facts and not something that wasn't the facts.

Mr. Alexander: But, of course, you know that in this kind of campaign, many times the political ads will say just vote against this because--and sometimes they don't tell the facts; they say because this may entail increase in taxes, etc. Yet, the proponents cannot say vote for it.

Mr. Avand: Well, if it does not in fact entail an increase in taxes, they could certainly point out that it did not, in fact, entail an increase in taxes. I don't think that you're suggesting that they should be permitted to figure an untruth with another untruth at public expense.

Mr. Alexander: Oh, no... I am only... I only have reference to rebutting the untruth.

Mr. Avand: All right. As long as they are giving the facts, they could do that under this provision.

Mr. Alexander: Yes, sir. I am only... I only have reference to rebutting the untruth.

Mr. Avand: Yes, sir. I am only... I only have reference to rebutting the untruth.

Mr. Alexander: Yes, sir. I am only... I only have reference to rebutting the untruth.

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they're doing, and why they're doing it, and what's going to happen if the bond issue is adopted.

Mr. Newton Jack, do you really see any difference in urging somebody to vote for a particular bond issue, in presenting the favorable facts of...in favor of the proposition only? Is there really any difference there?

Mr. Avant Mr. Newton, if I understand your question, I would answer it this way: that this is designed to permit local governing authorities, or any particular governmental authority, to use news media to set forth on a factually accurate basis the reasons for...of certain propositions. In other words, give the people the facts as to what is going to be done with the money, as to how much it's going to cost, as to how it will affect homestead exemption or be affected by them, and such things as that. It is designed to prohibit such things as having barbecues and furnishing booze, and other various and sundry items of political persuasion, at the expense of the general public, in order to put forth and across a certain political proposition. Does that answer your question? If it doesn't, I'll answer another.

Mr. Lanier Mr. Avant, just for the sake of the record: what would you construe to be political organizations as you have it listed in your amendment---says no public funds shall be appropriated to candidates or political organizations.

Mr. Avant Now, let's get one thing straight, Mr. Lanier. That particular original sentence in this proposal is not of my origin; that was the committee section as you will recall. My amendment simply inserts the word "proposition" in the first sentence and inserts the second sentence. But, you asked me the question, and I would answer it this way: that the public money should not be appropriated to be given to, say, the Democratic Party or the Republican Party or the...any political party or organization. I can name several that, or you can probably think of several political organizations in your own area. I know of a few in this area, but private political organizations---people who get together for political purposes. That's what it means to me. Well, since I've answered all of the questions, or attempted to, that anyone had cared to ask, I have made the explanation; I think you all understand what we're trying to do, and what we want to do, and the abuses that we want to stop and the things that will be permitted and should be permitted. With that, I ask that you vote favorably for this amendment.

Further Discussion

Mr. Bollinger Mr. Chairman, fellow delegates, I haven't been up here for a good while, but I think this is an important issue...I presume that's a hint. But, I seriously think that this is an important issue because when you look at our representative form of government, you seem to think that because you are represented in a public body, that whatever this public body does is done for the good of the whole. Look at the actions of the legislature in a lot of cases with regards to constitutional amendments. It takes two-thirds of the votes on the desk in this House plus an equal vote in the Senate to get a constitutional amendment on the ballot; but look how many we've had, and you all know they're not all good. Many legislators will admit to you that they vote for them because it's an issue for the people to decide. Consequently, you have a proposition that's put before the people, a lot of local governments who are affected, use public funds to advocate the passage or defeat of this; this is what I think the word "proposition" refers to in Mr. Avant's amendment. This is the good point; this is the point that was not stressed enough, in my opinion. What's wrong if I'm opposed to an issue? It's my tax money just like it is everyone else's? Why don't they pay for my point to fight the issue, or if I'm for it, and the public body is against an issue which affects a local area, why don't I get money to advocate the passage of a proposition?

Why should public funds be used on a lopsided basis? I move the adoption of the amendment.

Questions

Mr. Chatelain Delegate Bollinger, this is my problem with this; I wish you could clear me on it. I'm a little confused at this second sentence that says "However, this provision shall not prohibit the dissemination of factual information." Now, do I understand you to say that you could spend money, ...can the political subdivision spend money to disseminate this information?

Mr. Bollinger Yes, sir, there's no question about that the public has to be informed to vote intelligently on a proposition. The amendment limits the money being spent to only dissemination of information and not the advocacy of defeat or passage of the proposition.

Mr. Chatelain My second question please. Supposing, for instance, that a city council or a school board voted to have a bond election for the purpose of building buildings, etc., and three or four more of the other political subdivisions in that parish were against it, can political subdivision No. 2 then spend money to oppose the bond issues for the schools?

Mr. Bollinger Right now, I would say they can; however, I don't think it should be allowed. I don't think either side should be able to spend public funds for the passage or defeat of that kind of proposition.

Mr. Chatelain Thank you.

Mr. Deshotels Delegate Bollinger, I'm in agreement with the first part of your sentence, but the first sentence that you gave has two thoughts in it doesn't it? First of all, you're talking about an election, and in the second part you're talking about the person, isn't that right? Now, if you read the first sentence, and you read, "No public funds shall be," and then skip over to the third sentence, "appropriated to any candidate or political organization." Now, a candidate can be in more than one capacity, can he not? A candidate could also be in office on some other...in some other capacity, could he not? Could not this prohibit him from getting his salary?

Mr. Bollinger I don't think so, Mr. Deshotels, because he's getting his salary for executing the functions of an office and not for campaigning for his reelection or for election to a different office.

Mr. Deshotels But, you see you have no...you have no qualification as to that in your sentence.

Mr. Bollinger I don't see why it has to be qualified. He is not receiving funds for the advocacy of election or reelection to an office; he's receiving funds for the job he is doing in that office. I don't think there's any question about that.

Mr. Deshotels Mr. Bollinger, would you, when you sit down, reread your first sentence?

Mr. Bollinger I don't see the problem.

Mr. A. Jackson Delegate Bollinger, how does the last sentence of this amendment differ from the present law?

Mr. Bollinger Delegate Jackson, I don't know what the present law is with reference to the use of public funds.

Mr. A. Jackson My second question: are you aware of the fact that this problem that you're attempting to correct by way of a constitutional provision has been dealt with in the legislature and can be dealt with effectively, by way of statute?

Mr. Bollinger If it has been dealt with, in my

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opinion it's a poor job of enforcement because any time, on the local level—I'm not really familiar on the state level—that you have any sort of proposition proposed to the people, it is obvious that the public funds are used to advocate passage or defeat, so if there is legislation to this effect, then it's not enforced.

Further Discussion

Mr. Riecke Mr. Chairman and gentlemen, you will remember, yesterday, I was one of those who vigorously opposed the Avant amendment because I felt that it would prevent the dissemination of information on bond issues and other matters for the school systems. Now, the Jefferson Parish people—it was brought out yesterday—lost a bond issue because the people didn't know what it was all about, and after, on the second time, they informed the public what they were going to do with the money, bond money for, then the people were satisfied. Now, we all remember a couple of years ago, when the constitutional amendments on the ballot—there were fifty-two constitutional amendments. Now, some of those amendments were real good, really needed for their communities, but because there were fifty-two amendments and nobody knew what they were about, the people voted against all of them. This is the way people vote; I vote that way, and you vote that way. If they want to put something on a ballot and I don't understand it, for safety's sake I vote against it. This amendment has been changed to add that there's no... that this provision shall not prohibit the dissemination of factual information relative to any proposition appearing on the ballot. To me, this corrects the thing that was wrong with yesterday's amendment, and I've talked to as many people as I could that voted with me yesterday and against this amendment, and they feel that this takes care of the situation and does permit the dissemination of information. I'll be glad to answer any questions.

Questions

Mr. Arnette Mr. Riecke, the way you read this, do you think it would prevent any factual information, such as the facts given out in the Jefferson Parish case, from being disseminated? The second sentence specifically says that they may disseminate information.

Mr. Riecke Well, it wouldn't prevent it; it would permit it.

Mr. Arnette That's what I'm saying; you can...

Mr. Riecke It would permit it; that's right.

Mr. Arnette Right. So, this wouldn't prevent anyone from giving out the information, and subsequently, in other words, the thing would pass because the information was given out. Is that not correct?

Mr. Riecke Correct.

Mr. Hayes Mr. Riecke, would this permit the school boards to use public funds to disseminate this information with? You could use public funds, what I'm saying, to disseminate this information with?

Mr. Riecke Purely for informational purpose, yes.

Mr. Hayes Ok.

Mr. Roemer Mr. Riecke, just to save time, in your conversations around the floor, is there anyone opposed to this? I haven't heard any opposition. Do you think there's anyone opposed to this amendment?

Mr. Riecke I've talked to a great deal of people, and they all agree that this is a good amendment. I don't know how many more will agree with it.

Mr. Hayes Mr. Riecke, I take your statement as...

The wording of "However, this provision shall not prohibit the dissemination of factual information relative to any proposition appearing on the election ballot." That is, information can be made without any funds whatsoever, but nothing is to indicate that you can use public funds for this purpose. The first sentence prohibits the use of public funds for this specific thing. The dissemination and the payment for this information is not to be made with public funds. I don't see any other concern.

Mr. Willis Now, you say this provision, Mr. Riecke, prohibits the use of public funds for this purpose. The paragraph which says "no public funds shall be used." Then the second paragraph complements that, making an exception. Thank you.

Further Discussion

Mr. A. Jackson Mr. Chairman, ladies and gentlemen of this convention, I rise in opposition to this amendment. I don't think that it's much of an improvement over the amendments offered on yesterday, to deal with this problem. I think the convention has acted wisely, in its action on yesterday when it deleted this section from its proposed election article, and I say so because this is a contemporary problem that is going to change from time to time, and five years from today, I would suspect that we are going to look at this whole business of how we finance elections in quite a different light. We have attempted to deal with this problem, while not completely, by way of statutes. This is the way that this problem ought to be dealt with that confronts us presently. It ought to be dealt with by way of statutes because none of us can anticipate the kinds of needs and the kinds of directions that the whole business of financing elections will take. So, therefore, I would urge that we would reject this amendment and leave it to the legislature to deal with because I think that they can make the kind of temporary... can place the kind of temporary and contemporary changes that ought to be placed to solve the problem as it confronts us presently. I do think that this last sentence is going to lead to all kinds of interpretations, and you're going to find yourself in a kind of situations and confusions, as it relates to interpreting the last sentence. I don't think that it's going to enable school boards once again to protect the integrity of public education because they are not going to have the power to act wisely and prudently as it relates to bond issues. So, I would again urge the rejection of this amendment.

Questions

Mr. Willis Mr. Jackson, I want to tell you that I subscribe to everything that you said, and in the way you said it. I have four questions to substantiate what you say as valid. No. 1: Is it not true that the pen is mightier than the sword?

Mr. A. Jackson Well, it's stronger than the sword, the pen and the sword.

Mr. Willis Well, we're talking in generalities. I assume your answer would be yes; mine would be. Now, does not this last sentence with which you quibble, and with which I quibble, tend to encourage the spending of public monies for a proposition?

Mr. A. Jackson I think so.

Mr. Willis And, of that sentence, I quoted it. It is, "It is not to be used for the purpose of opposing against his own money?"

Mr. A. Jackson I think so.

Mr. Willis Now, that would be the question, would it follow and spending of money?

Mr. A. Jackson I think that's a reasonable question.

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Mr. Willis Now, the third question is: isn't a half-truth the worse kind of untruth? Assuming your answer to that is yes--and mine would be--that isn't it a fact that if the school board, or whoever wants to put up a proposition, only tell the people half the truth about that proposition, they are not telling them the whole truth, which is what you swear to as a witness, then they might be telling them a gross untruth, isn't that correct?

Mr. A. Jackson I think you raise a rather interesting point that ought to be considered.

Mr. Willis I applaud your statement that the legislature can better handle it with the proper exceptions to this general and becoming proposition, but there should be exceptions to every general rule.

Mr. A. Jackson I appreciate your observations.

Mr. Sandoz Mr. Jackson, isn't it true that this section is not self-operative, and it would require legislative action to enforce it?

Mr. A. Jackson There's no question about that; that was the question I proposed to Mr. Bollinger.

Mr. Sandoz Isn't it also true, sir, that you have some provisions in here already in your statutes?

Mr. A. Jackson That is correct.

Mr. Sandoz Isn't it true that if there's any problem with the enforcement, that it exists under the present law, and this would not solve that problem?

Mr. A. Jackson There's no question about that.

[Motion for the Previous question rejected.]

Further Discussion

Mr. Derbes Ladies and gentlemen, I won't take much of your time. I'd just like to point out a couple of things here in the interest of trying to do this as effectively as possible. I don't think that this kind of language belongs in the constitution that we're presently considering, and I'll tell you why. I think, basically, that I am in complete agreement with Mr. Avant's efforts, but I don't think that the succinct language which we can only use in this constitution is sufficiently specific to define the areas that we seek to prohibit and the areas that we seek to permit. I would like to point out a couple of things to you. First of all, as I understand it, some ordinances which authorize certain bond issues include, in the ordinances passed, language which explains the benefits or advocates that the issues are in the interest of the local governing authority. It would seem to me that this kind of language would be prohibited by this particular amendment. It also occurs to me that this amendment is not self-executing. In other words, it does not necessarily give taxpayers, or voters or citizens, a right to challenge efforts on the part of local governing bodies, or contributions made on their parts, to such programs and such advertising campaigns. What I'm suggesting to you is that although something might be prohibited by this language, perhaps the voters or the taxpayers may not have standing to challenge it, and that such standing might have to be provided by legislative act, which means that we would have to revert again to the legislature for specific authorization. Now, I want to argue with the language of the amendment itself. First of all, I spent about three years in the newspaper business, and, frankly, I don't know what factual information is. I mean, I think I know what it is, but what it is to you and what it is to me may be two different things. Believe me, I have argued with a lot of reporters and a lot of writers about what is factual and what is not. Secondly, "to urge" means to advocate or to persuade, but such urging can be either implicit or explicit; indeed, it can even

be subliminal. I don't know when urging begins and when mere presentation of facts ends. I think it's something which can be much more clearly defined by the legislature. What I am afraid of most of all from the Avant amendment,--and I certainly don't want to impugn Mr. Avant's motives, quite the contrary, I agree with him in principle--is that a court is going to pick up on the language of the first sentence and extend it more by virtue of the emptiness, in which I regard as the emptiness and the vagueness of the language--and extend it and give it broader effect and more pervasive authority than you or I, or all of us as a delegation, would intend for it to have. It is general, vague, static, universal language, and when the courts are going to fill it up with specific definitions, what we're heading for may be something completely different than what you or I would want at this juncture. So, I urge you to consider it very carefully. I'm not opposed to it in principle; I just don't think it belongs in the constitution because in legislative act it can be specifically set forth and provided for in all of the necessary particulars. Thank you.

Question

Mr. Flory Mr. Derbes, how do you reconcile the fact that you felt it strong enough to place in the constitution the preservation of historical district...or historical preservation districts like the Vieux Carre, and yet, you're not willing to put in the constitution protection of the public fisc?

Mr. Derbes Well, Mr. Flory, I suggest to you that we can't, that the two of us, or all of us, can sit down and we can agree on exactly what my amendment on historic preservation districts means. I suggest to you that the two of us cannot sit down, or this body cannot sit down as a whole, and agree on what this amendment really means because it's too general.

Further Discussion

Mr. Newton I will try to be brief. First of all, I want to say that I think that the campaign of the Orleans Levee Board for the passage of a constitutional amendment in this last election, or when they were trying to get those levee districts, that the amount of money they spent and they way they did it was one of the greatest abuses of the public fisc that I have ever seen. But, I rise in opposition to this amendment. This material is statutory, first of all. I don't think it does what it sets out to do, in the second place. Now, assuming that the last sentence allows the spending of public funds for dissemination of information, let me point out to you that there is no limitation whatsoever on the spending of public funds. They could spend money on high-powered advertising firms, and you know what these kind of people can do with money. And the dissemination of information--a good public relations firm can make it come out any way they want it. I urge the defeat of this amendment.

Further Discussion

Mr. Burson Mr. Chairman, fellow delegates, I am against this amendment for three basic reasons. First and foremost, it seems to me that this is the kind of thing that involves subtle distinctions that can only be made in legislation and cannot be made in a constitutional provision. I share the distaste of the previous speakers for the type of use of public funds as was demonstrated by the Orleans Levee Board in campaigning for the hurricane protection provisions during the last constitutional amendment election. However, it seems to me that the first sentence of this amendment absolutely prohibits the use of any public funds for or against any proposition in whatever way it might be construed that one were urging someone to be for the proposition or to be against the proposition. This absolute prohibition, in my view, is not in any way affected by the second sentence which merely says that you can disseminate factual information. Of course, you can disseminate factual information. But, it does nothing to qualify the absolute prohibition.

sentence. Now, in the school board on which I have served in St. Landry Parish, when we've confronted this issue, we have never spent a nickel of public money in any kind of ads in the newspaper, or otherwise, for school bond issues or for the renewal of school taxes. We have done our work there by settling up private funds for this purpose. I think that's the way it ought to be, but it troubles me that when you use such broad sweeping language, you may be, as was pointed out by Mr. Aertker and some of the other speakers yesterday, whether you intend to do so or not, leaving open the possibility that the public funds prohibition could be stretched to the point where the staff of the school board, the supervisors and the superintendent, could not assemble the information for you to use in your ads. Certainly, I think that these salaried employees might well be prevented from going out and addressing civic clubs and meetings of citizenry to urge passage of school bond issues and school taxes. I think that when they work for the school board they are honor bound to do this; they must do it, and they're the ones that have the information that the public has to have. I can't imagine any school supervisor or school board member going out and giving a half-baked or half-hearted factual presentation without concluding his presentation by urging his listeners to vote for the proposition that he's advancing. I think that this amendment is directed at a specific abuse, that a specific abuse can best be taken care of in legislation. I, for one, would not want to do anything that might be even possibly construed to hamper the public school system in a time of great trouble for that system because I believe, firmly and totally, that the public school system--free public education--is what, more than anything else, sets out American society and distinguishes it from other systems in the world. I urge, for that reason, the defeat of this amendment.

Question

Mr. Chairman, Mr. Hargrave, I just want to ask you, when I showed you this amendment that you would like to see.

Mr. Chairman, Mr. Hargrave, I said that I was for the principle of using public funds to solicit votes for or against a proposition. However, I think I also indicated to you that I thought that that was a matter that probably could be best handled by statute because it seems to me you've got to make some distinctions here, and you cannot distinguish in a constitution.

Further Discussion

Mrs. Warren Mr. Chairman and fellow delegates, I didn't get a chance to ask Mr. Derbes the questions I wanted to ask him, but in the meantime, I did go behind in the room and asked our staff that the state has so given us to help us in our deliberations, and I asked Mr. Hargrave and I asked Mrs. Duncan what this amendment would do. They told me what it would do, and I'm satisfied. Now, maybe they could tell you a little bit better than I can tell you now. If you feel that they can, they are right here, and I won't mind calling on them to come down and explain it. What this amendment is going to do, according to them, is the same thing that Mr. Avant and them wanted to do. Now, Mr. Burson is no more interested in the public school system than I am. He is no more interested in the children. I spend... I can tell you there is not hardly a board meeting in our city that I don't attend. If I don't attend it, I must be out of town--you can believe that. I know that there is a lot can be cleaned up in our system. I know that we passed a one-cent sales tax for the increment of our teachers' pay, and many of them said they didn't get it yet. I would like to know just about how much money the one-cent sales tax brings into our city, and how much money goes through for the paying of the teachers' salary. I do know that we can

keep from having the abuses in the future to come up, and eliminate those that we know that are in the past. Cause I can tell you one thing: I've been around long enough to know that where money is, it doesn't stay it has an odor, by it sure do stink at times. People like money and sometimes they will spend it for things that it should not be spent for. So, I think there should be a check. The next thing I want each one of you to ask yourselves: Are you speaking in the interest of those people in the community that are going to vote on this thing? Do you think that they want you to tell them how to vote or to tell them what it's all about? You're going to make up your mind. I can remember, once, when I was sitting in a class trying to make a decision as to what the priorities was for the improvements in a certain school in our city. The teacher was standing up and he said, "We are going to make these priorities." I was holding a list in my hand, and I was supposed to be writing down our priorities. So, as the teacher went down the lines, he says, "This is going to be the priority--this is going to be number one; this is going to be number two; this is going to be number three." I said to him, said, "Listen mister, would you tell me one thing?" He said, "What is that?" I said, "Are we supposed to make these priorities or you?" He said, "This is what the district superintendent told me to do." So, I'm saying to you: let people make up their minds whether they want to vote on an issue; put the proposition before them and let them be the judge. You don't have to tell them how to vote. I support this amendment one hundred percent. If you think that I haven't given you any information, ask Mrs. Duncan or Mr. Hargrave to come out and explain to you what this amendment will do, and I think you will be satisfied. Thank you.

Further

Mr. Chairman, ladies and gentlemen, I support the theory of this amendment, but what bothers me is the wording in the second sentence. It says, "However, this provision shall not prohibit the dissemination of factual information relative to any proposition appearing on an election ballot." Now, it seems to me the second sentence means that could spend public funds as long as it was "to disseminate factual information relative to any proposition appearing on the election ballot." I'm wondering about... say a school board, for instance, was interested in a certain bond issue, or a police jury or what not, there'd be nothing to keep them from hiring with public funds, a public relations firm to put on T.V., during prime time if they wanted to, what they considered "factual information relative to a proposition appearing on an election ballot." Now, you know and I know that these factual situations can be diametrically opposed in a lawsuit or criminal case. A district attorney in an open statement sets out a factual situation. If the defense attorney make an opening statement, he sets out a factual situation that's diametrically opposed to it. The district attorney's factual situation, if proven, leads to a conviction. The defense attorney's factual situation, if proven, leads to an acquittal. Mr. Chairman, there's so much noise here, apparently the only person listening to me is myself. I'd like a little quiet and the courtesy of those who are here to keep their voices over in the dungeon than we do here.

Mr. Chairman, I just want to say to you that I am really very sorry that I can't hear you. I am really very sorry about the noise, please. Give the gentleman your attention.

Mr. Chairman, I just want to say to you that I am really very sorry that I can't hear you. I am really very sorry about the noise, please. Give the gentleman your attention.

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elector to vote for or against any candidate or any proposition. Likewise, public funds should not be used for dissemination of factual information. It's easy enough to get the factual information in the papers and the news media for nothing. For those reasons I reluctantly vote against it, but I feel I must, under the circumstances.

Questions

Mr. Roemer Wellborn, you are the second or third speaker who said that you had no quibble with the intent behind this amendment. Is that true?

Mr. Jack That is correct. I don't think the public funds, Mr. Roemer, should be used at all on these kind of things, and I'm afraid, though, the way this uses in the second sentence that they can get the message over and use our money and really be campaigning for or against some proposition. I'm not bothered about the candidates.

Mr. Roemer I understand that; I understand your reason. But, I wondered that...for those of us who share with you the intent to support what this tries to say, I wonder, if for our benefit because you disagree with the wording, are you working on an amendment that would clarify your objections? I mean, are you taking that extra step to really give us something to work with if this really is no good?

Mr. Jack No. I'd be glad to sit down with you, but I'm not, actually, greatly worried about it. It really ought to be statutory. It won't hurt to put in the constitution, but I don't know that we should put every social safeguard. However, I think all we'd have to do--you and I can draw an amendment--just tell the Clerk to draw one like that and take out that second line.

Further Discussion

Mr. Juneau Mr. Chairman and fellow delegates, I won't take up much of your time, but it's just been amazing to me. We are sitting here and everybody is agreeing that the concept that's embodied in this amendment is good. They said, "You know, we've had a lot of problems on the levee board, and I remember that problem spending forty thousand dollars and fifty thousand dollars, but I'm just afraid maybe it's not that..." It seems to me that this is a legislative act. It seems to me that this is a pretty good amendment. It seems to me that we have an amendment here which is basically the same prohibition that we are operating the Constitutional Convention of 1973, and I can't think of anything in the last fifty years that's more important than this Constitutional Convention. We have a specific prohibition which prohibits this convention for using money to advocate the defeat or passage of this constitution. I believe we can do that. I believe that if we infringe upon the rights of one person in this state, be it in the local election or in a state election, to tell him that we're going to pass or defeat a constitution with his money, I think we are doing a wrong. I think if we've done a wrong to one taxpayer in that regard, we've done it bad. For that reason, I think that the amendment is good. There's been a lot of discussion Mr. Planchard brought up what I consider to be a problem in the second sentence because I don't, again, refer to the use of public funds. Well, I'm going to have an amendment, if this one passes, to clarify that problem. But, that's not a reason to vote against this amendment. If you agree in concept, I submit to you that what this amendment will do in our constitution, it's going to make a man on the local level, or on the state level, a little bit more conscious when he starts hiring or getting ready to spend fifty and sixty thousand dollars of local money to hire an advertising agency to put through a proposition they may only get through by fifty-one percent. I think that's a good concept. I think it will make him more conscious when he says, "The information we're going to put out, Ad Man, better be factual because if not, we're going to get hit with a suit which is in direct contradiction

of the constitutional provision. Mr. Chairman, are there any other speakers on..."

Questions

Mr. Vick Mr. Juneau, did you hear all these speakers say that this should be relegated to the legislature in the form of a statute?

Mr. Juneau I heard some people say that, yes, sir.

Mr. Vick Do you know that Mr. Wall proposed this as legislation and couldn't get it passed?

Mr. Juneau I wasn't aware of that, but if you say it's so...

Mr. Vick And that's the reason it should be in the constitution.

Mr. Juneau Well, my answer to that, whether it was proposed or wasn't proposed, Mr. Vick, I think it's of sufficient magnitude to be in a constitution. We're talking about the public's money, and I think this is the kind of prohibition that ought to be in a constitution.

Mr. Jenkins Pat, as chairman of the Public Information Committee, you've had to deal with this very question in promoting the work of the convention. Have you had a great deal of difficulty or have you been able to work it so that you can explain the convention's activities without advocating passage or defeat?

Mr. Juneau I think that we are not able to buy buttons and banners and things of that nature, Mr. Jenkins, but I think that we can use the media, all phases of the media, to get out the word, and legitimately so. To my knowledge, we haven't got any complaints saying that we have overstepped the bounds in that regard. I think that the job can be done, yes, sir.

Mr. Willis Pat, assuming public funds were used to disseminate information with respect to that "igloo" in New Orleans, the big one, what percentage of truth of that information is now residuum or is left? Do you follow my question?

Mr. Juneau I'm not sure that I do, Burton.

Mr. Willis We were told, as I recall, that it would cost so much. Now, what percentage of truth was that in the initial story?

Mr. Juneau Are you talking about with regard to the cost of the convention? I'm not sure that I understand you.

Mr. Willis Well, I'll be specific. We were told, once upon a time, that the dome stadium would cost in the vicinity of thirty-one, thirty-two, thirty-three million dollars. Now, what percentage of truth was that to that information disseminated to us at that time?

Mr. Juneau Well, my answer to that, Burt, would simply be this: That I think, putting into the constitution, that you have used the language "factual." Of course, you know everything is subject to lawsuit, and this would be no exception. But, I think that we have done to the maximum extent possible, as the legislature could do no more, to mandate that you shall go no further than factual information. I can...it would be my reaction, Burt, that it would be awfully difficult for a man on the local level or on a district...or on the Superdome, to overstep that bound. I think we've...if we would have had such a prohibition in our constitution at the time, I think that there would be an awfully more careful step would have been made at that time.

Mr. Willis But you realize that there is no provision in this amendment to put anybody under oath with respect to the truth, the whole truth, and nothing but the truth.

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Mr. Juneau: I am assuming that the bill is...

Mr. Juneau: Mr. Chairman, what is the bill about? Is it to amend the constitution?

Mr. Juneau: Public Information.

Mr. Rayburn: Do we spend any money on the public information, to your knowledge, or is it being spent public as to what we're doing?

Mr. Juneau: Yes, sir.

Mr. Rayburn: Do you see any difference in the money that we are spending on the money that the school board or some other public body might want to spend to inform the citizens of what they were planning or what plans they had to do?

Mr. Juneau: No, sir. I don't see any problem at all. I do... I would think this distinction would exist, Senator Rayburn, that if we were to come out with advertisements, "Support the Constitution," "Information of no regard, "Check Yes," as would a school board, and spend thirty thousand dollars in that regard for a documentary for the advocacy of the passing of the constitution. If a school board would do that, I think we would both be doing wrong. Hopefully, we haven't done that, yet, in this convention.

Mr. Rayburn: Well, do I understand you to say, then, that we don't intend to spend a nickel asking the people to support any phase of what we're doing down here? Is that your opinion, or is that your statement now?

Mr. Juneau: It's my understanding, Senator, that through the act of the legislature which appropriate the money--this legislature--this Senate and this House specifically said that no money shall be used by this convention to advocate the passage of this constitution--not public money in that regard. That's my understanding of the legislation.

Closing

Mr. Avant: Mr. Chairman and fellow delegates, I ask you to listen to me and I ask you to think about what this convention is doing. I want to say that I cannot understand, for the life of me, the people who come to this microphone and say "We have never done this. We have never spent public money in the fashion that you are seeking to prohibit because we don't think it's right, but we don't want you to put that prohibition in the constitution." I just don't understand it. Now, I want to apologize in advance to any people whose sensibilities may be offended if I get emotional. I was criticized for that the other day, but I want to tell you where we are, as far as I'm concerned. You have, in your wisdom, seen fit to recommend to the people of this state that we put a provision in this constitution that will permit local governing authorities to create districts that will be able to expropriate my property or my neighbors' property, to float a bond issue for that purpose, to build an industrial plant on my property, my neighbors' property, and then turn around and sell it to whom they will. Now, you are being asked to take my tax money and my neighbors' tax money and spend it to convince the voting public that that's the right and proper thing to do. That's what you're doing; you're doggone right that's what you are being asked to do. The only thing I want to leave with you: Do I get emotional? Yes, because I still believe that I live in the United States of America, and if the day ever comes that you can do that, then I ask you: why did boys die on the beaches of Normandy, in the jungles of Southeast Asia and at Pearl Harbor? That's what I'm talking about. You're telling me that you want to take my property and my neighbors' property away from me, then turn around and sell it to some other private individual. Then you want to

of a campaign. Well, let me tell you that. If that's what you believe, then you should be an amendment.

Mr. Poynter: Amendment No. 1 [by Mr. Juneau, page 3, line 29, in Floor Amendment No. 1, adopted by Delegate Avant, et al., adopted by the Convention on today, and on line 6 of said amendment, after the words, "shall not prohibit," and before the words "the dissemination" insert the words "the use of public funds for--"]

Explanation

Mr. Chairman and members of the convention, I won't take up much of your time other than to tell you this was the amendment which was discussed just here previously. I treat this amendment as being a clarification of what the intent was. If we do not adopt this amendment, then it would be a hiatus that you could not possibly use public funds even for the dissemination of factual information. I certainly don't think that that's the intent of the members of this convention. I, of course, am open to any questions.

Questions

Mr. Denberry: Mr. Juneau, I take it that the definition of the language which you suggest would permit, for example, during a political campaign, a public office, the use of a publicly owned television station to permit all of the candidates to appear on public television, that it would also permit the use of a publicly owned television station to disseminate information by any governmental official on any proposition that might be before the public. Is that correct?

Mr. Juneau: It's my understanding, the way that the amendment was originally drafted, that this language with regard to the dissemination of factual information pertains only to a proposition. Therefore, the use of public funds by a public body could be used, pamphlets or television-wise, to factually disseminate whatever that information is, whenever that cost could be absorbed, yes, sir. I do not construe that, though, with regard to candidates because the second sentence, as I read it, has nothing whatsoever to do with candidates, but only with regard to a proposition.

Mr. Denberry: Well, in other words, you feel that the first sentence would prohibit the use of a publicly owned television station to permit all of the candidates for a particular public office to appear and speak their piece, for example?

Mr. Juneau: I think that you could not use, as I read it, Mr. Denberry, could not use public funds used to urge any elector to vote for or against. It would not, in my opinion, prevent a forum for a discussion of all candidates because, in my opinion, that would not be for or against.

Mr. Denberry: Thank you, sir. I will bring up the question.

Mr. Chatelain: Delegate Juneau...do you realize that this is the first time that I have ever seen a bill that is so long and so complicated, and that it is so difficult to read and understand?

Mr. Juneau: Well, the only I add, Mr. Chatelain, when...the remarks I made that this amendment was adopted by the time we voted on the constitution.

Mr. Rayburn: Well, I think it is a little bit long, but your words because you have no limit. Everything that is in there, I think, I hope some of the people on the floor will understand it. I will be happy to explain it.

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tation.

Mr. Juneau Burt, I would have to say the accountability of a local public official would be the best limitation you would have in that regard. I think, be it in a constitutional or legislative act or otherwise, it would be completely impossible to put a limitation per se, in that regard.

Mr. Willis Well, it is a limitation with respect to public officials and not to public funds for the dissemination of information. But, I think that the proper purpose of a constitution is to properly harness. I should think that the limits would be the best harness, and it is devoid of limit.

Mr. Juneau Well, the only answer to that: you would be talking about, I assume, a dollars and cents figure, and I just don't think that would be appropriate in the constitution, myself.

[Previous question ordered. Amendment adopted: 91-3. Motion to reconsider tabled.]

Point of Information

Mr. Tate Mr. Speaker, as a point of parliamentary inquiry, now the new amended section is going to require sixty-seven votes to pass?

Mr. Henry That's correct.

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Derbes]. On page 3, line 28, in Floor Amendment No. 1 proposed by Delegate Avant and adopted by the convention on today, at the end of line 8 of said amendment after the word and punctuation "ballot," add the following sentence: "Any elector shall have the right to contest an expenditure of funds prohibited by this Section."

Explanation

Mr. Derbes Ladies and gentlemen, I acquiesce to the convention's great wisdom in adopting the Orleans Parish Levee Board's expenditure of funds--in order to advocate, or in order to publicize, or provide information on the constitutional amendments that were advanced recently. A group of citizens went to court and were bounced out of court challenging that public agency's right to spend the money. They were bounced out of court, because they weren't owners of real property. I am merely trying to clarify any issue. I am merely trying to say that all persons are aggrieved by such an expenditure and if they are citizens of the state and domiciliaries of the area, they should have the right to challenge it.

Mr. Derbes Ladies and gentlemen, I acquiesce to the convention's great wisdom in adopting the Orleans Parish Levee Board's expenditure of funds--in order to advocate, or in order to publicize, or provide information on the constitutional amendments that were advanced recently. A group of citizens went to court and were bounced out of court challenging that public agency's right to spend the money. They were bounced out of court, because they weren't owners of real property. I am merely trying to clarify any issue. I am merely trying to say that all persons are aggrieved by such an expenditure and if they are citizens of the state and domiciliaries of the area, they should have the right to challenge it.

Vice Chairman Casey in the Chair

Question

Mr. Roy Mr. Derbes, do you mean that an elector from Alexandria could file a suit in Orleans to stop some type of use of funds on a basis and have standing in court, even though he is not from there and has nothing to do with the election?

Mr. Derbes Good question. Maybe you ought to draft another amendment, Mr. Roy.

[Amendment withdrawn.]

Amendment

Mr. Poynter The instructions [on amendment by Mr. Derbes] say the same, the language or verbiage was changed as follows: "Any person who is an

elector and who is a domiciliary of the district or districts wherein the election is scheduled, shall have standing to contest an expenditure of funds prohibited by this section."

I'd do that one more time. The initial language would read as follows: "Any person who is an elector and who is a domiciliary of the district or districts wherein the election is scheduled, shall have standing," etc.

Explanation

Mr. Derbes Again, I think that if you are going to say that people have a right or that...if you are going to say that "public funds cannot be expended in a certain way," the only way that individuals then can challenge such expenditures of state funds or public funds, is through access to the courts. Unfortunately, the line of cases which has developed the arguments of standing, and the principles of standing, have occasionally excluded ordinary citizens--that is, electors, registered voters--on the basis that they were, in some instances, not owners of real property or they didn't have a specialized interest in the outcome of the elections. In other words, that they were merely, merely electors and ordinary citizens and they had to demonstrate a greater interest than that in order to succeed. So, I suggest to you that if you really want to say what you mean in the Avant amendment, that you should adopt this amendment as a supplement to provide all citizens of the area affected with access to the courts. It seems to me to follow from the premise of the Avant amendment--which I had my own disagreement with--but now I would like to make it clear.

Questions

Mr. Munson Mr. Derbes, the electors or the people you are concerned with in that particular district, don't they have that right now to go to court? Is it prohibited now for them to file suit?

Mr. Derbes I thought I explained that to you, Mr. Munson. In some cases, in some elections, for example, I can call your attention specifically to the thing that we have been discussing--the Orleans Parish Levee Board's expenditure of funds--in order to advocate, or in order to publicize, or provide information on the constitutional amendments that were advanced recently. A group of citizens went to court and were bounced out of court challenging that public agency's right to spend the money. They were bounced out of court, because they weren't owners of real property. I am merely trying to clarify any issue. I am merely trying to say that all persons are aggrieved by such an expenditure and if they are citizens of the state and domiciliaries of the area, they should have the right to challenge it.

Mr. Munson What would you do in the case of a minor, who is a property owner and a resident, but is not an elector?

Mr. Derbes He wouldn't have any rights under the amendment, Mr. Munson. He would ordinarily not have any right to bring suit in his own name, anyway. He would have to be an elector.

Mr. Munson But, he is a property owner, isn't he?

Mr. Derbes No...if you...

Mr. Munson But, he would be affected even though he was a minor?

Mr. Derbes No, no. The amendment, as it's phrased, reads in the conjunctive rather than disjunctive. It says "Any person who is an elector and who is a domiciliary of the district or districts," etc. So, he would have to fulfill both...

Mr. Munson You got me then, because I didn't understand what you were saying, being a farmer.

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OCTOBER 10, 1973

RECEIVED BY THE SECRETARY OF THE HOUSE OF REPRESENTATIVES
OCTOBER 10, 1973

[Motion for the Previous:]

requirement)

Mr. Arnette Mr. Derbes, there are two things that upset me about this. First of all, suppose as a taxpayer of the state, I'm taxed—which appropriation goes to, say, to the levee board of New Orleans, or Orleans Levee Board—and they spend my money to do something that I don't want them to do that is against the constitution, why shouldn't I have a right to bring suit about it?

Mr. Derbes Well, what I'm suggesting to you, Mr. Arnette—you see this illustrates the very point of my original disagreement with the Avant amendment—namely, it tries to do too much with too few words. But, I would like to point out to you that by a legislative act, additional provisions could be made whereby Arnette, who lives in Jennings, could challenge something that occurs in Orleans Parish, if the legislature in its infinite wisdom deems that appropriate. But, until that occurs—and since everybody is worried about when we are going to have general laws and Mr. Vick mentioned that Mr. Wall introduced provisions that were rejected by the House and so forth—I suggest to you that the only way to make the provisions of the Avant amendment truly operative to the benefit of all people is to give them standing.

Mr. Arnette Why don't you just leave it to the legislature? Now, you say, of course, why wait for the general law? But, the problem with your thing is if you state this in the constitution, it seems to limit it to those people that you name and they shall only have standing.

Mr. Derbes No, sir. It does not say that.

Mr. Arnette There is implication to me there...

Mr. Derbes No, no. It simply grants them standing and the legislature can supplement that by additional provisions which would make...which would say other things and give them other rights to the courts. I'm looking at the original roll call on the Avant amendment. I notice that you voted yes on it, Mr. Arnette. I, frankly, can't imagine why you are not in favor of my amendment.

Mr. Arnette Because, I think it's too restrictive.

Mr. Avant Mr. Derbes, did you know that I'm again for your amendment? I'll answer your question that you just propounded to Mr. Arnette. It's because the present law is that "any interested taxpayer has standing to sue to challenge the illegal expenditure of public funds."

Mr. Derbes All you are doing, Mr. So, you object to the Avant, because it merely confirms and essentially codifies existing law?

Mr. Riecke Mr. Derbes, you're an attorney. I want to ask a legal opinion on this. Let's assume that the school board spent three thousand dollars to promote a bond issue. Let's assume that the people voted for it overwhelmingly to permit the school board to sell these bonds. Now, could somebody attack the sale of those bonds because it was done illegally? Under your...I mean...

Mr. Derbes Mr. Riecke, if that was the concern of your, I think you should have that concern when you voted for and advocated the Avant amendment that's just another one of the problems that the Avant amendment generates. My amendment does nothing but says that you can't discriminate in access to

I rise to oppose the inclusion of this particular provision, particularly as it is written, in the constitution. The intentions here are good, but as you can well recognize, looking at this particular section, it's going to take the action of the legislature to implement this. Yet there is no provision in here, whatsoever, for legislative action to do that. This doesn't say according to law or anything of the sort. How are you going to put into effect and enforce it without some legislation? In fact of the business...the concept here should be contained in the legislative act altogether, and in detail, to set it up exactly when and how the prohibition shall be granted and the remedies of the taxpayers, or electors, or the citizens for the enforcement of this particular article or section. I can see the day as we are going along now, particularly as a result of the hearings we have had on Watergate and others, that we might want to get out of the category of financing political campaigns by private contributions. You well know, it permits those who have, to get their way. I don't think that's a good system for our type of government. I would like to see the day when we could have programs that would be free to the candidates, over a certain period of time, to give their views so that every elector would know exactly what he is getting for his vote, without the idea of having to let those candidates who can get out and raise the most money by promises, from those that hope to get something out of it if the candidate should be successful, determining who we are going to have elected to our political offices. This particular section that we are putting in our constitution would prohibit that. I just think that it's bad. We have in...or are beginning, educational television in this state. Do you know on the educational television, under this particular section, I don't think we can say a thing in the world about for or against the constitutional proposals whenever we try to take them to the people, if we want to use that means? We won't be able to do it. I'm just throwing out some things here that just immediately take care of that situation. Now, if you want to absolutely eliminate educational TV for the putting forth of information, dissemination of information, on the constitution as we will have it proposed, O.K., go ahead and adopt this particular section. I just think we are getting into a category that you are going to wish that we had not, if we go ahead and put this in the constitution. So, I am going to ask you...in all good judgment, "Let's don't clutter up our constitution with something like this in it." It can take care of by legislation. I hope that if the action of the legislature, I will have the chance

the times and make our changes and adjustments through legislation, as we ought to have. I have no particular ax to grind. I think I know what the proposers of this are attempting to do and what it do. I want to help them. But, we can't do it by this amendment. I'm just throwing it out against it.

television? You can enlighten all you want too.

Mr. De Brieux I, I just think that under

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Mr. Avant Mr. Chairman, I waive and use the words of my friend, Mr. Willis, "Just hang in there, baby."

[Section passed: 87-26. Motion to reconsider tabled.]

Amendment

Mr. Poynter Delegate Conroy sends up amendments dealing with citizenship.

This adds: On page 3, line 29, the following section:

Section--and let's change it to 19, Mr. Conroy.

Section 19. A person who is not a citizen of the United States shall not be citizen of this state."

Explanation

Mr. Conroy In reviewing the action which the convention has taken so far and in reviewing Article VIII of the present constitution on elections, there were two provisions which I found that we had not dealt with--it seemed to me as a convention--that we should consider and not simply fail to deal with. I bring these each before the convention as a whole, so that there can be a clear understanding as to what the convention intends and what it has done. The first of these two amendments is the one that you have before you, dealing with citizenship. Unfortunately, in the circumstances here, I am going to have to refer you to some material which you probably don't have available--it may still be over in Independence Hall--but the fact is that the present constitution requires that, in connection with voting, that every citizen of this state and of the United States, native born or naturalized, shall have the right to vote. In what we have done so far, we have left out the reference to being a citizen of the United States, in connection with the right to vote. In this bill, the Rights Committee Proposal, we said "Every citizen of the state upon reaching eighteen years of age shall have the right to register and vote." In this proposal, we have said that "The legislature shall provide for a Code of Elections and except as otherwise provided in this constitution, the right to vote in elections is guaranteed to all citizens of this state." Again, in both these cases, no reference is made to being a citizen of the United States. However, in the article on the executive branch, when we dealt with qualifications for office for the executive branch, we stated that to be eligible for any statewide elective office, a person must have attained the age of twenty-five years, be an elector, and be a citizen of the United States. I think there is some confusion, therefore, at this point as to whether there is any possibility of a person being a citizen of the State of Louisiana and not being a citizen of the United States. The Fourteenth Amendment to the Constitution of the United States deals with the converse principle and says that "Any person who is a citizen of the United States shall be a citizen of the state in which he resides." But, there simply is no definition in our constitution of what a citizen of the State of Louisiana is. Now, if we intend that a citizen of the State of Louisiana can only be one who is also a citizen of the United States, I think we have to say so. Otherwise, it is possible and under some United States Supreme Court decisions may be closer to reality than you might at first think. It would be possible for a person who resides...an alien who resides in the State of Louisiana to claim that he is a citizen of the State of Louisiana, even though he is not a citizen of the United States. This is the purpose of this amendment, was simply to clarify that point and to make it clear that a person could not be considered a citizen of this state, particularly in reference here to the question of voting unless he is a citizen of the United States and either native born here or naturalized under the laws of the United States. I'll yield to any questions.

Questions

Mr. De Blieux Mr. Conroy, if I'm not mistaken, I know it has been the law for some time that a person has been also interpreted as being a corporation. Now, I know you did not mean that in this particular amendment. Don't you think it might make this clearer, if we added in the word "a natural person" in order to be sure of what we are speaking about here because as an elector, I think that's well understood that that must be a natural person, but in this particular amendment just as you have it worded here? Now, of course, I believe we have had classified before in our law is...a corporation could also be a citizen, you see. Now, I believe though, that you would need that clarifying word in there.

Mr. Conroy Senator De Blieux, I would have no objection to adding any clarification. But, I don't think it's necessary in this because this is purely in the negative, to exclude from citizenship in this state any person who is not a citizen of the United States. If you wanted to make further exclusions from citizenship, explanatory exclusions, I certainly have no objections to it, but this is simply to deal with that one single problem. As I said, I think that the problem that you address yourself may exist in addition to the problem I'm addressing myself to. But, I don't think that changing the purpose of it would be the purpose of my amendment which is simply to make certain that in order to be a citizen of this state, you must be a citizen of the United States. As a matter of fact, now that you've mentioned it, when I gave this to the staff they failed to type up some words that were in there. In front of the word "citizen", I had the words "natural born or naturalized citizen of the United States." I just noticed that in this copy that's typed here; that would have made it clearer...it would have conformed to the language of the Fourteenth Amendment.

Mr. Gravel I have the same problem as Senator De Blieux has. Are you saying that you are willing to withdraw the amendment and change it to read, "A person who is not a natural born or naturalized citizen of the United States?"

Mr. Conroy Yes, that's what my rough draft had said. I'm sorry that that language isn't in there.

Mr. Gravel I would be for it, if that language change was made.

[Amendment withdrawn.]

Amendment

Mr. Poynter [Amendment by Mr. Conroy]. Would read as follows:

"Section 19. A person who is not a natural born or naturalized citizen of the United States shall not be a citizen of this state."

"Native born or naturalized." All right.

Explanation

Mr. Conroy The "native born or naturalized" is the language in the present constitution, in connection with voting. The section as it reads is, A person who is not a native born or naturalized citizen of the United States shall not be a citizen of this state."

Mr. Henry Is that the way your copy reads, Mr. Clerk? We want to make sure that...All right.

Questions

Mr. Bergeron Dave, you said you were going to refer us to some information in our constitution. Is that Article VIII, Section 1, you are referring us to?

Mr. Conroy Yes.

Mr. Bergeron I'm just wondering how up-to-date this information is; it's supposed to be up-to-date completely. But, reading Citizenship and Age, I find every citizen of this state and of the United

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Mr. Conroy Well, I don't think we have to worry about those people, Mr. Toca, because they wouldn't be with us any more and their children would have been...

Mr. Toca Oh, yea, well they've got some still here.

Mr. Conroy Their children who have been born in the United States would be citizens of the United States. Therefore, there would not be a problem...

Mr. Toca I don't agree with you, no, sir. They got some people still living here.

Mr. Conroy I must have misunderstood your dates.

Further Discussion

Mr. Denberry I appear here primarily because the Chairman failed to recognize me for a question, although I was wildly waving my hand in the back.

I do not understand why Mr. Conroy's amendment does not follow the language of the Fourteenth Amendment which says, "all persons born or naturalized". He says a person who is not a native-born or naturalized citizen.

Therefore, the door is open for a difference in interpretation. But beyond that, I disagree with Mr. Conroy's interpretation of the Fourteenth Amendment. It seems to me that if you read the Fourteenth Amendment, it clearly says--it defines who are citizens of the various states. "All persons born or naturalized in the United States and subject to the jurisdiction, thereof, are citizens of the United States and of the state wherein they reside." Therefore, anyone in this state who resides here and who is a person born or naturalized in the United States is a citizen of this state, and by the Fourteenth Amendment is also a citizen of the United States. So it seems to me we are putting unnecessary language into the constitution.

For that reason, I urge that you consider very carefully before you adopt the amendment which changes the language in the constitution in the Fourteenth Amendment.

I yield to any questions, Mr. Chairman.

Questions

Mrs. Corne Mr. Denberry, it just seems to me like there are some people who have come here--say during the First World War period who certainly would be still living today, many of them--as a reason of having married, say, American soldiers, they were automatically accepted in this country as citizens. Would these then come under the heading of naturalized American citizens?

Mr. Denberry Yes, ma'am, I believe so. I think the naturalization law specifically says so.

Mrs. Corne It would be automatic naturalization?

Mr. Denberry That's my understanding of the law, yes ma'am.

Mr. Arnette Moise, one thing that concerns me. You say it's unnecessary. But this is exactly the opposite language of the Fourteenth Amendment. In other words, the Fourteenth Amendment says, "if you are born in the state, then you are a citizen of the state and the U.S." O.K. But this is just the opposite. It says, "if you are not a citizen of the United States, then you are not a citizen of this state." Isn't that correct?

Mr. Denberry Except if...there is a negative pregnant in the constitution of the United States which says that "if you are a citizen of the United States, then you are a citizen of the state in which you reside."

Mr. Arnette Exactly correct.

But what about the situation where a person is not a citizen of the United States?

Mr. Denberry Then he is not a citizen of the state in which he resides.

Mr. Arnette You mean under the Federal Constitution?

Mr. Denberry That's my understanding of it.

Mr. Arnette The Federal Constitution regulates who can be a citizen of this state?

Mr. Denberry That's my understanding. Yes, sir.

Mr. Conroy Mr. Denberry, if I had been able to find anyone who could give me authority for the statement which you just made, I wouldn't have presented this amendment. If you can find any, I'd be happy to see it. But as yet, I find nothing, as I indicated originally...

Mr. Denberry The authority is Denberry.

Mr. Conroy Thank you, Mr. Denberry.

Mr. De Blieux Mr. Denberry, do you know of any case to where a person could be a citizen of this state without being a citizen of the United States?

Mr. Denberry I can't conceive of any, no sir, Senator.

Mr. De Blieux Well then, what purpose would this serve in our constitution?

Mr. Denberry That's exactly what I say.

Further Discussion

Mr. Pugh Mr. Chairman, fellow delegates, I commend Delegate Conroy for bringing this to our attention. There were some oversights earlier in the work that we have done. However, I suggest that we vote against this amendment because, I believe, one, it should be under Bill of Rights, if at all; two, I think Style and Drafting will at this point be the only committee who might go back into the earlier sections, or articles mentioned by Mr. Conroy, and bring to our attention the corrections that are needed there so that we will not have the oversights in those articles mentioned by Mr. Conroy.

I reiterate, I don't believe we are prepared to intelligently vote on this amendment now. I believe that if there is to be a provision comparable to this in the constitution, obviously it ought to be under Bill of Rights and not under the election section; and third, I think the Bill of Rights can correct the errors which we might have committed earlier in the passage of some of the amendments or some of the sections in the articles.

Thank you.

[Previous Question ordered.]

Closing

Mr. Conroy I think Mr. Pugh's comment is correct in its direction, but I think it is misleading a little bit in the...in what the Style and Drafting Committee can do. I am a member of that committee, and I would certainly be my suggestion if this amendment passed to try to put the appropriate language in the appropriate place.

My concern, at this point, is that without an expression from this convention that we intend that a person would be both a citizen of this state and of the United States in order to exercise the right to vote--that the Committee on Style and Drafting would be powerless to do what Mr. Pugh has suggested we might do. So I urge you to vote for this amendment. I assure you that the Committee on Style and Drafting would try to rearrange the language so that it did appear in the proper place. But there is no other way we can do it at this point since we've passed the earlier section in this particular article, and we have passed the section...the comparable section in the Bill of Rights Article. The

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parochial and local officers. I have attempted to eliminate that problem and not apply it to local and parochial officers by stating that the change of domicile requirement would apply only to officials for whom this constitution spells out requirements that they live in a particular district or something of that sort as we do for district attorneys, for judges, for any number of officers.

The only one, however, of the officials for which we have described such qualifications, a residence qualification for whom we have stated a disqualification as a result of change of domicile has been legislators. We do have, we have provided a provision similar to this for legislators, but we have not provided it for any of the other officers that we provide are elected on a district basis in this constitution; or parish basis, in some cases, for assessors, for sheriffs, etc. Without this provision, it would be, at least theoretically possible, for a sheriff or a district attorney who didn't plan to run again for office, to change his residence or domicile, whichever is required by this constitution, from the parish in which he is serving, and still continue to hold that office. This amendment is designed to carry forward the provisions of the present constitution and preclude that.

Questions

Mr. Nunez Mr. Conroy, what I'm concerned about is take, for an example, a case where someone out of necessity...let's just take hurricanes, again, because that seems to be prevalent in my area where two hurricanes in five years just totally wiped out communities...one of them where several of my police jurors or other elected officials--one was a representative, two, a sheriff, and a clerk of court--had to move from there...that particular area. In some instances, to another parish--to Gretna, out of Plaquemine, or from St. Bernard into Orleans. How would that affect that...your particular article?

Mr. Conroy I don't think that a temporary change of location of an apartment or something like that, certainly wouldn't be a change within this provision. Senator Nunez, that's...I read you the present constitution. If it wouldn't have affected it under the present constitution, it certainly wouldn't affect it under this provision.

Mr. Nunez Would you call a temporary change for two years...would that be temporary?...because many of them stayed two years away from their...their...where their residence because there was no way to get back. There was no oil, water, gas, lights etc. It lasted that long.

Mr. Conroy Senator, were they ousted out of office under the present constitution? If not, then mine is no more restrictive because the present constitution says, "whenever any officer changes his residence from the district, parish, municipality, or ward in which he holds such office, the same shall thereby be vacated." That's the present constitution.

Mr. Cannon Mr. Conroy, I'm noting in your language here that you're implying an active...an act on the part of an individual to change his residence...

Mr. Conroy Yes.

Mr. Cannon ...from one district, or one area that he represents, or some defined area that's referred to in this constitution. What if the district lines change and I'm...I mean if they change upon him...

Mr. Conroy I don't think that would affect his ability to continue to hold the office under the way this amendment is worded.

Mr. Cannon Well, I mean in these days of court ordered reapportionment and things like this.

Mr. Conroy But it would...depending on what the rules were for election the next time around, he'd

have to qualify for election the next time, but this says "he changes the domicile from that required as qualification for election to the office." So if he held the proper domicile and didn't change his domicile, I don't think this provision would affect him in any way.

Mr. Cannon Let me ask you this. What about a district attorney, say who represents a multiparish area, and it gets severed and...

Mr. Conroy Well, you're going to have two district attorneys then. If you have...that'll normally provide for the election of two district attorneys to...the next election again. He is not going to have to live in the district in which he wants to hold that office.

Mr. Cannon Right.

Mr. Tobias Mr. Conroy, I'm reading Section 4 of the Legislative proposal, and it refers to what happens after reapportionment. Do you see any conflict between your proposal and this? Why or why not?

Mr. Conroy You said you were reading it. You'd have to wait awhile for me to read it. But I read it previously. I did not find any conflict.

Mr. Tapper Mr. Conroy, isn't it a fact in recent years there has been much, much litigation over the term "residency"?

Mr. Conroy Yes, I imagine there always will be when...

Mr. Tapper Isn't it a further fact that the courts...the federal courts, have held that a man can have more than one residence?...

Mr. Conroy Yes.

Mr. Tapper Legal residence?

Mr. Conroy Yes.

Mr. Tapper My last question is, then, why put residency in this constitution in this section when there is so much controversy over it? Who shall determine where a man's residence is. Suppose I have...

Mr. Conroy Mr. Tapper, we have that requirement in the constitution already, in connection with his election to office. If he doesn't change it after he is qualified for election to office, he is not going to have any problem. But the same...it doesn't create any new problems. The problem already exists in connection with qualification for office.

Mr. Jenkins David, it's been suggested that perhaps this question should be handled in an election code. But it occurred to me that possibly it would not be legally possible for an election code to handle this. Would you discuss that point?

Mr. Conroy Mr. Jenkins, I do not think it could be handled by legislation because if, in this constitution, we set up an office and say that for that particular office you must be a resident of a particular district for a certain period of time, and then contain nothing...have nothing further in the constitution with regard to removal of that person from office by virtue of leaving that particular residential area, or the residence that he's in. I don't think that the legislature could then come behind and provide for the removal of an officer whose qualifications are described in this constitution. I don't think that constitutionally the legislature would have that right. So that if, if this convention desires to cope with this concept, I think they have to do it here in the constitution.

[I think you would not want to. I think it rejected. I think it would be recommended tabled.]

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Personal Privilege

Mr. De Blieux Mr. Chairman, ladies and gentlemen, I just wondered if we shouldn't take that vote over. I think there is something under the present constitution that you cannot vote upon, something that you have an interest in. Clearly, if I remember correctly, Reverend Stovall had an interest in this particular provision, and he voted. It's not the question of how he voted, but the fact that he had an interest. I know we have taken some votes over when somebody had an interest before.

[Previous Question ordered on the Proposal.]

Announcements

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Thursday, October 11, 1973

ROLL CALL

[101 delegates present and a quorum.]

PRAYER

Mr. Champagne Let us pray.

Lord, grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.
Amen.

PLEDGE OF ALLEGIANCE

READING AND ADOPTION OF THE JOURNAL

Personal Privilege

Mrs. Miller Ladies and gentlemen of the convention, I do come before you on a point of personal privilege, on behalf of the four Vice chairmen of the convention. As you know, you all can often get very much out of order, and sometimes the decisions get very technical, and we do think that Mr. David Poynter is invaluable. As you know, when he's up there, he's constantly telling us what to say. Very seldom does he make the wrong move, but, you know, our Chairman says occasionally, he makes a mistake. But, when we hit revenue and taxation, it's going to be very important that he doesn't make any mistakes on his ruling, and so that he can stay in practice on telling us what to say, we have brought him this Charlie McCarthy doll.

PROPOSALS ON THIRD READING AND FINAL PASSAGE

[Motion to suspend the rules to take Committee Proposal No. 23 out of its regular order adopted without objection.]

Reading of the Proposal

Mr. Poynter Committee Proposal No. 23, introduced by Delegate Stagg, Chairman on behalf of the Committee on the Executive Department, and other delegates, members of that committee.

A proposal prohibiting dual employment and dual officeholding in state and local government.

"Article __, Section __. Dual employment and dual officeholding.

Section __, Paragraph (A). Except as otherwise provided in this section, no person holding, under the government of this state or any of its political subdivisions, any office or employment of trust or per diem, salary, or other emolument of office shall at the same time hold any other such office or employment with the United States, any foreign power, or any other state, nor shall any such person hold more than one such office or employment with this state or any of its political subdivisions.

(B) For the purposes of this section, the following shall not be considered to be offices or employment described in Paragraph (A) of this section: (1) ex officio positions; (2) notaries public; (3) those serving on boards, commissions and other instrumentalities performing solely policy-making or advisory functions; (4) delegates to, as well as, officials and employees of, any constitutional convention; (5) members in the reserve of the armed forces and the National Guard; and (6) election commissioners.

(C) Nothing in this section shall prevent teachers in the public educational system...education system of the state from holding elective public office, except that a teacher shall be prohibited from serving as a member of the parish or municipal school board of which he is an employee.

(D) Upon a determination made by the Board of Ethics after a public hearing and under such procedures as may be provided by statute, that the public interest is not adversely affected, exceptions from this section may be permitted."

Explanation

Mr. Gravel Mr. Chairman and ladies and gentlemen of the convention, this proposal by the Committee of the Executive Department, submits for consideration by this convention, a strong dual officeholding and dual employment prohibition article. The language contained in the first paragraph is, to some extent, a rewrite of the present provisions of the constitution, but in part, I think, has been strengthened to make it clear that no person shall hold two public offices, or be employed by any government, or two separate governments at the same time, or two separate parts of government. That is the general provision of the article. The next two sections provide for specific exceptions, which the committee felt should be spelled out in the constitution, and the final section authorizes the Board of Ethics, in those instances where the public interest is not adversely affected, to make additional general or special exceptions. I don't think it would serve any useful purpose for me to restate what is clearly demonstrated by reading of the article, as to what we're trying to accomplish. I do think it's important to restate that the committee felt that there should be in the constitution a strong, definitive provision with respect to dual officeholding and dual employment. Mr. Chairman, I'll answer any questions that any of the delegates have with respect to the proposal.

Questions

Mr. Duval Mr. Gravel, this proposal changes the law quite a great deal. Does it not?

Mr. Gravel Yes, it does.

Mr. Duval There previously was no constitutional provision applying to dual employment. Is that correct?

Mr. Gravel That's correct.

...There's a statute on it, but no constitutional provision.

Mr. Duval As this presently reads, a person, let's say, who's a secretary or a clerk for a municipality or a political subdivision, could not run for office. Is that correct?

Mr. Gravel I think that person could run for office, but if elected,...

Mr. Duval They would have to give up their job, right?

Mr. Gravel Unless the Board of Ethics felt, that by maintaining that employment and holding the office, the public interest was not adversely affected. That's correct, Mr. Duval.

Mr. Duval Now, I notice that in this proposal school teachers are specifically exempt, and what I'm wondering is: how is there a logical distinction between school teachers and all other employees, either directly or peripherally connected with the state or its political subdivision?

Mr. Gravel The committee felt, after weighing the arguments both ways, that this was a valid exception that could be made because of the number of school teachers that, of course, existed throughout the state, and because we did not want to require school teachers to give up their jobs in order to hold an elective office and particularly in order to service members of the legislature.

Mr. Duval Well, what I'm wondering about: why is it going to be...why are school teachers going to be treated differently than all the rest of the employees? What makes them so different?

Mr. Gravel Mr. Duval, we just felt that this particular category was strong enough to be placed in the constitution, and we'd leave other consider-

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prevent me from having student teachers? You see, what I...do you understand about student teachers?

Mr. Gravel No, I don't...I'm not hearing. I'm not getting your words. There's something wrong with the mike or my ears, one or the other.

Mrs. Wisham No, I think it's the mike. A teacher can train other students under them, and we are paid per diem to do it; we are paid so much per month, say, fifty dollars a month for each student. Will that prevent me from doing that? That will be an extra salary.

Mr. Gravel Is that a public employment separate from your employment as a teacher?

Mrs. Wisham Yes, it is.

Mr. Gravel I think you probably would have the prohibition, unless the Board of Ethics would authorize that category of conduct.

Mrs. Wisham Well, my second question was: we do have resource people coming into the, say, the parish or the classroom and helping us...university professors come in.

Mr. Gravel Aren't they working on just one job when they're doing that?

Mrs. Wisham Well, sometimes, we do pay them extra for coming in.

Mr. Gravel If there were two separate employments, one by the school board and one, let's say, by LSU, then I think that would have to get clearance from the Board of Ethics under this language. We realize that possibility does exist.

Mrs. Warren Mr. Gravel, some of our teachers teach in the public school system during the day, and they teach at our universities sometime at night. Now, this would prohibit that?

Mr. Gravel If they are separate employers, yes, it would, I think.

Mrs. Warren Number two...

Mr. Gravel Unless the Board of Ethics would rule that they could do it, that public interest was not adversely affected by that.

Mrs. Warren Well, how would the Board of Ethics go about doing it, when you put this in the constitution like this?

Mr. Gravel Just the way they...you know, they would act under the same procedure.

Mrs. Warren They'd make some exceptions to that.

Mr. Gravel Let me ask you a question. They would act just as they act now. A request is made to determine whether or not the particular situation that is presented to them constitutes dual employment, adversely affecting the public interest, and they would make a determination. That's how they would act.

Mrs. Warren Well, in this event, you find some of the federal funded programs. If a teacher's teaching in a public school system, the only way she could participate in a federally funded program, they would have to come through the public school system that he or she is working in?

Mr. Gravel If that's a separate employment, there would have to be either a general or a specific authorization by the Board of Ethics, upon a determination that such dual employment was not...did not adversely affect the public interest.

Mr. Avant Mr. Gravel, do you agree that if this section or proposal is adopted as it's written,

it would make the Board of Ethics just about the most powerful agency in the state?

Mr. Gravel No, I don't agree.

Mr. Avant Well, let me ask you this: I know for a fact that Judge Alvin Rubin teaches at the Law School, or he has taught at the Law School, since he has become a United States District judge, and as I understand it, he would be prohibited from doing that under this amendment--under this proposal--unless the Board of Ethics decided that it wasn't contrary to the public interest for him to do that. Then they could say, Judge Rubin, it's all right for you to do that. That's right, isn't it?

Mr. Gravel They could certainly do that, and certainly would, of course.

Mr. Avant Now, my good friend, Mr. Kean, who's a delegate to this convention and who for many, many years was the city-parish attorney for the parish of East Baton Rouge, he also taught at the Law School. As a matter of fact, he taught me. The same Board of Ethics, though, could decide that it would not be in the public interest for Mr. Kean to do that. Could they not, sir?

Mr. Gravel It might so decide. It's inconceivable to me that they would because I don't see why the public interest would be adversely affected in that case, but that would be a determination to be made by the Board of Ethics, based on all the facts and circumstances.

Mr. Avant Don't you think that's an awful lot of power to be giving to one nonelective board?

Mr. Gravel I think it's enough power to correct some of the rampant abuses that we have in the state where we have dual officeholding and dual employment that leads to many of the corrupt practices that we have in Louisiana. I think it's a small price to pay, Mr. Avant.

Mr. Pugh I believe this follows along with what Delegate Avant said, but if we, so far, provided in this constitution any other authority to any other board or group--perhaps the judiciary to interpret--but any other board or group to, in effect, amend the constitution by one of their rulings?

Mr. Gravel I don't agree that we do that here, Mr. Pugh.

Mr. Pugh You don't think that they may not add exceptions in Subparagraph (8) by finding that those do not, in effect, adversely affect the public interest?

Mr. Gravel All they do is set down a standard saying that people may hold two jobs or two positions that do not adversely affect the public interest, and require the Board of Ethics to make the determination.

Mr. Pugh Thank you.

Mr. Roemer Camille, could you refresh our memory on what we've done here vis-a-vis the Board of Ethics? I mean, who are they? Have we done anything in this constitution...

Mr. Gravel We have not structured the Board of Ethics. All we've done, as I recall it, is to provide that there shall be a Code of Ethics.

Mr. Roemer I see.

Mr. Gravel We have not specifically structured a board.

Mr. Roemer Well, how do we get a Board of Ethics now? Who appoints them? Do they run for the job?

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Mr. Gravel Well, under the present law, the legislature has set up and structured the board. I would hope that this convention will structure the Board of Ethics.

Mr. Roemer Are you telling us the legislature appoints the Board of Ethics in this state?

Mr. [redacted] will, when advised, be contacted by [redacted] at [redacted] at [redacted] at [redacted].

Mr. Gravel I think that...I'm not sure, Mr. Roemer, but I believe they are appointed from panels or from categories by the governor.

Mr. Gravel I believe from specific categories.

Mr. Roemer And, if we do nothing to the contrary in this constitution, the governor would continue to appoint this board. Is that not true?

Is that true that the governor would continue to appoint such a board?

Mr. Gravel: I don't know. Mr. Staggs's pointing out something to me that says we've passed the Board of Ethics. I don't know whether...I think we did provide for a Board of Ethics, but I didn't think we have provided for it's [its] structure yet, at this time. I don't know; he's saying something over here.

Mr. Roemer Well, I think somebody, don't you agree, that somebody ought to address themselves to who is the board, what their responsibilities are...

Mr. Gravel Mr. Roemer, I tried to answer that as well as I could a while ago. I said that I hoped that this convention would structure the Board of Ethics. This is not the place, I don't think, to structure it. I think if we adopted this, then it would become very important to determine what the structure of the Board of Ethics would be, and how it would be set forth.

Mr. Roemer Well, I'm not suggesting that we structure it here, am I, Mr. Gravel? I'm just suggesting that we consider their importance.

Mr. Grav. Oh, yes.

Mr. Singletary Mr. Gravel, would you explain to us a little bit about the interpretation of the article, under the old constitution, and how the committee proposal differs? It seems that the old constitution has, to my knowledge, has functioned all right.

Mr. Grave] Well, we've really been operating both under the provisions of the old constitution, or the present constitution, and the statute. There is a dual officeholding statute, too, besides the provisions in the constitution that relate to dual employment. But, this is a composite of some of the concepts of the existing law, together with what the committee -- a majority of the committee -- felt was a refinement of a concept that we believe should be built into the constitution and a (strong dual) officeholding and dual employment prohibition.

Let me just make this observation to clarify things. Mr. Stagg hands me a copy of Committee Proposal No. 22, which, as finally adopted, provides that the code of ethics will be administered by a Board or Boards of Ethics created by the legislature with such qualifications, terms of office, duties and powers as are provided by law.

Mr. Singletary: I am a member of the committee. I will tell us how your committee proposal differs.

Mr. Gravel: I can't hear you.

Mr. Singletary: Could you tell us now some of the important differences between the committee proposal and the old constitution? For instance, we have here...we have district attorneys that are Constitutional Convention delegates, and we're all delegates, and this has not been held to be a violation of dual officeholding under the old constitution. Could you explain some of those things?

Mr. Gravel I don't believe I could detail the differences at this point, Mr. Singletary.

Mr. Goldman Mr. Gravel, could you explain, or either name, as examples, those board which have advisory capacities only? I don't quite understand what kind of boards or commissions those are.

Mr. Gravel: Well, very often there will be, either appointed by a public official, or by a department

Q. Goldman Oh, you mean like a committee of one hundred for a project for a city or something like that?

Mr. Gravel Any number of boards. There are a number of boards that have to be constituted for advisory purposes under the federal program..

Mr. Goldman Such as a board I happen to be chair
man of such as the advisory board for the city
school system for career education, that would be
strictly an advisory type board.

Mr. Gravel I think that's right.

Mr. Goldman That wouldn't prohibit me from serving on a state commission that the governor might appoint me on?

Mr. Gravel: That's correct. It'd be exempt.

Mr. Goldman: All right. Now, let me ask you one other question: serving on more than one state commission would be prohibited, wouldn't it? The same person serving on more than one state commission, such as the Television Authority and the Governor's Committee on the Employment of the Handicapped, unless the Board of Ethics...

[illegible]

My 100th birthday wish, that I will be asked about when
I'm 100 years old, would really be: I want to know
Thank you

Mr. Staggs - Mr. Gravel, in the Committee on the Executive Branch we had in our program of work both the Board of Ethics and dual officeholding assigned to us, and is it not your recollection that we brought to the floor of the convention first, September 15, the proposal in making provision for a Code of Ethics and a Board of Ethics first, because the guts of the dual officeholding provision was the allowance of a provision for the Board of Ethics to decide whether a dual officeholding, or a supposed dual officeholding, adversely affected the interest of the state--could then be decided

do interrelate to some extent.

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Mr. Stagg Is it not your... was it not the considered opinion of the committee, that the Board of Ethics could, by a successive series of rulings, set up categories that might not be adversely affected to where every individual case would not have to go to them, but they would, by the setting up of the procedures and the decisions of the board, form a body of rulings by the board to which a citizen could refer to see whether or not his activity was against the dual officeholding provision in the constitution?

Mr. Gravel That's correct. The language, I think, clearly encompasses the possibility and the probability that the Board of Ethics can rule generally and specially. They can rule and say that as a class, certain kinds of double employment are permitted, so that it would affect maybe hundreds, or even thousands, of people. Then, there may be a number of instances where rulings have to be made on specific and unique facts.

Amendment

Mr. Poynter These are the Anzalone, Tobias, and Gauthier amendments. I might point out, initially, there's a set of amendments passed out with just the names of Anzalone and Tobias. That is not the set. The correct set has three coauthors: Anzalone, Tobias, and Gauthier.

Amendment No. 1. On page 1, delete lines 12 through 32, both inclusive, in their entirety and on page 2 delete lines 1 through 8, both inclusive in their entirety and insert in lieu thereof the following: "Section _____. (A) The legislature shall enact laws defining and regulating dual employment and dual officeholding in state and local government."

[Amendment withdrawn.]

Amendment

Mr. Poynter [Amendment by Mr. Anzalone] "Section _____. (A) The legislature shall enact laws defining and regulating dual employment and defining, regulating, and prohibiting dual officeholding in state and local government."

Explanation

Mr. Anzalone Ladies and gentlemen of the convention, the Committee on the Executive Department has struggled since we first began meeting, with the idea of dual officeholding. There were certain concepts that we could agree on, but every time we came up with a provision, it was so far-sweeping that it included just about everybody in the State of Louisiana. I am sure that most of you would agree that duality in officeholding is wrong. This article prohibits the election to two elective offices, and this is right. It prohibits legislators, for instance, from accepting employment in any other state agency, to keep them free and independent, and this is right. But let's look at some of the things that it does that are wrong. Mr. Slay, you asked a question concerning your constable and the deputy sheriff. No, sir. That's got to stop! A highway worker, for instance, cannot be a part-time garbage collector. A state trooper cannot be a night watchman at L.S.U. But yet, the provision does provide that anyone who is lucky enough to serve on a board, commission, or other instrumental, performing solely policymaking or advisory functions, at fifty to seventy-five dollars a day can most certainly hold as many of them as he can get appointed to. Well, this isn't right. Subparagraph (D) deals with the fact that the board of ethics is constitutionally authorized to make exceptions. Mr. Gravel, in his explanation, said that the board of ethics, by this provision, would be constitutionally authorized to make sweeping changes. Now, what does this mean? Does this mean that the board of ethics on its own volition can make all of the changes that it wants to, and if the legislature disagrees, then the board of ethics

is going to rule? It just will not work. The board of ethics is given the authority and the duty to handle every one of these cases. We have information that leads us to believe that there are approximately fifteen or twenty thousand of these things in the state now, at a minimum figure. Is the board of ethics... how are they going to handle it? A commission of seven people--how many years is it going to take them to get these provisions decided? Mr. Smith made a question a while ago. Could a man who is a constable drive a school bus? Not under this provision, he can't. If he was lucky enough to finally get that school bus, and he came to the board of Ethics and said "gentlemen, I would like to have your permission to do it," they'd say "come back in about two years because the docket is slightly crowded right now, because we've got about another twenty-five thousand cases to hear." Ladies and gentlemen, the twelve hours that was allotted to the Committee on the Executive Department was simply not enough time to present something to this convention in the form of a prohibition against dual officeholding and dual employment that is going to be satisfactory anywhere across the realm of this state. This is just not satisfactory--what we have now. The only thing that we're saying is, is that "yes, we do want to prohibit dual officeholding because it is not right." Another thing that we are saying is where the legislature finds it advisable to do so, they can prevent dual employment. But, I cannot see for the life of me, how you're going to disrupt the democratic process of this state, by letting a man who is on the lower echelon of a salary scale, seek dual employment with another state or parochial agency. This is what this provision does, and it's bad. I ask you to vote for my amendment, and let the legislature study the problem and come up with an answer.

Questions

Mr. Kean Mr. Anzalone, if I understood the statement of the Chairman, if we approved your amendment, then we can go home. Is that correct?

Mr. Anzalone I don't know, Mr. Kean. I don't know whether I'm going to vote to go home or not. But, it seems like that's what going to happen.

Mr. Smith Mr. Anzalone, if you left this to the legislature, do you think they'd ever do it?

Mr. Anzalone Well, Mr. Jasper, the only thing that I can tell you is that we've got a lot of "the legislature shall" in this convention, and we don't have anything in here to say what's going to happen to them if they "shall not." But, the only thing that I'm saying is that I would much rather leave it up to the legislature rather than put something in here that's going to affect twenty-five or fifty thousand people that don't necessarily need to be affected. In answer to your question, I hope that the provision that we have provided for the legislature will make them independent enough to do it.

Mr. Smith Probably some of the legislators now holding dual offices?

Mr. Anzalone Sir?

Mr. Smith Don't you think some of them now are holding dual offices--legislators?

Mr. Anzalone I understand that they are.

Mr. Smith It would be kind of hard for them to do this, wouldn't it--take themselves away from their job?

Mr. Anzalone That particular one? Yes, sir, I would agree to that.

Mr. Goldman Your amendment doesn't prohibit one who is holding office from running for another of-

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clause in this sentence says that "the legislature shall define and prohibit dual officeholding?"

Mr. Jenkins Yes, Joe. But, you see, that is so general and so vague, that it's not clear what it does. For example, herein we make an exception for serving on commissions of a policymaking or advisory nature; in the legislature they might well make exceptions for all sorts of things--serving on boards of whatever nature, serving in all sorts of positions where there is not a great deal of remuneration, and so on. Because of the vague nature of it, I think probably the only thing we're doing is prohibiting, maybe, serving in two elective offices. But, we're giving so much leeway that we're not really giving protection, I don't think. Let's define it a little more thoroughly; let's don't be afraid of words; let's work out the words.

Mr. Anzalone Woody, you have just touched on the problem that we have struggled with in our committee for the past six months. Now, sitting here saying that you want to reject this amendment, because you don't trust the legislature in what it's going to do, is one thing, but if you've got something better, bring it up; because I've been look for it for six months, and I haven't found it yet, and that's the reason I put the amendment in there.

Mr. Jenkins Well, I think the place to do it, Joe, is in that first paragraph, the last sentence, where it specifically prohibits dual officeholding and dual employment within the state. I think there, if we say--instead of what it says--if we say, "prohibit dual officeholding," and then "prohibit the holding of both an office and a position of employment," we've got that dual employment. I think that will solve the problem...keeping, down the in the lower part of that first page, the provision excepting teachers.

Mr. Anzalone Would you write that up and present it?

Mr. Jenkins I'd be glad to. But, if we adopt this amendment, that's going to be moot, so I....

Mr. Anzalone Do you think that this is better than what we have now, as a committee proposal?

Mr. Jenkins I think the committee proposal basically is good, but we need to make some technical changes in it.

Mr. Anzalone Technical?

Mr. Jenkins Sure.

Mr. Gauthier Woody, in light of what you just said, in regards to dual officeholding, or office-holding and employment, are you then saying that the small communities who pay their elected officials possibly fifty dollars a month, or even less--in some cases perhaps a few dollars more--they will be prohibited from being employed by the local governing body, is that correct?

Mr. Jenkins Well, that's the case now, as I appreciate it. Of course, we have certain exceptions, Wendell, noted in there. If they're serving on an advisory commission, or something like that, that should be exempt. But, if they're not...my goodness we have 3.6 million people in this state; we have plenty....

Mr. Gauthier Then there are some exceptions, is that correct?

Mr. Jenkins Yes.

Mr. Gauthier Well, would you want to list these exceptions in your proposal?

Mr. Jenkins Yes. I think as the committee has done it, there are some other exceptions that need to be made; let's make them.

Mr. Gauthier Do you think we would cover them all that should be in, or do you think there's a possibility we would leave some out by error?

Mr. Jenkins No, I think we can if we're thoughtful about it, Wendell. I think basically the committees....

Mr. Gauthier I agree with you in principle, but I don't think that we can do it in the time permitted. I don't see how it's possible, but if you have such an amendment, I'd like to see it.

Mr. Jenkins I'll be glad to draft some.

Mr. Avant Mr. Jenkins, there is something here down on line 29 that I don't understand, and I wonder if you could explain it to me. It exempts from this, members in the reserve of the armed forces and the national guard. Now, I can recall, I think, at least three members of the legislature who were elected while they were on active duty with the armed forces. One of them, I think was in Korea, but he knew he would be back here in time to serve in the legislature. Now, would this prohibit a man like that from running for office?

Mr. Jenkins No, Jack. As I appreciate the Executive Committee Proposal, it prohibits them from serving in those two capacities, but wouldn't prohibit a person from running while in one of those positions, so....

Further Discussion

Mr. Abraham Mr. Chairman, fellow delegates, let me refer to Article 19, which is the dual officeholding or dual officeholding. Article XIX, Section 4, says "no member of congress nor person holding or exercising any office of trust or profit under the United States, or any state, or under any foreign power, shall be eligible as a member of the legislature, or hold or exercise any office of trust or profit under the state, nor hold or exercise any person hold or exercise at the same time, more than one office of profit, except that of justice of the peace and notary public provided this section shall not apply to officers in the Reserve, United States Army, Navy, Marines, and National Guard." Now, we have a provision in the present constitution prohibiting dual officeholding. Because this provision was vague, because there was no real means by which determinations could be made of whether a particular position was dual officeholding or not, we attempted to strengthen this provision. Now, there is no intent on the part of this proposal to prohibit a person from being on, say, the city council of a small town and working in a lesser job with the highway department. There is nothing in here to prevent a policeman from running for the city council or being on...not running for the city council, but for being on the school board. What we're trying to prevent here is a person using his office to further his own personal means. Now, Paragraph (D) of this proposal clearly states that the board of ethics will be able to make rulings and determinations, and will be able to make general rulings exempting certain people from the provisions of this article. They will determine that this does not adversely affect the interest of the state, and this person can hold these two jobs or he can hold this one elected office and hold this other job. What we are trying to prevent, for instance, is a person who is on a school board--an elected office--from promoting himself into a job as a school bus driver, or from a person who may be in the legislature, from promoting himself into a job with the highway department. This is the type of thing that we're trying to prevent in this article. There is no intent on the part of the committee, or on the part of this proposal, to say that this guy who's got this small job--part-time job--with the highway department or small...can't work part-time as a deputy sheriff or anything like that. Because there has been no one to make rulings on these things, to really say whether this is dual

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couple of weeks ago to make a strong code of ethics. All of this fits in with the ethics. I urge the rejection of this Anzalone amendment. If you leave it up to the legislature to pass this, then how are they going to determine what is dual officeholding and what is not? I say the best way to handle this is to make a strong restriction, and then let the board of ethics relax the restrictions whenever it sees that the interests of the state are not adversely affected. I urge the rejection of this amendment, and the adoption of the proposal as submitted by the committee.

Further Discussion

Mr. Arnette I would like to talk briefly on the committee proposal and on the amendment under consideration. First of all the committee proposal, the intent of the particular provision, was to do away with all the abuses that you hear about in the press—hear about on the radio and T.V.—about people holding two different offices or having several little state jobs. This is what we sought to get rid of. Secondly the section as proposed by the committee does not prevent anyone from holding two positions of employment if they aren't against the state interest. It doesn't flat out prohibit any dual employment. If you want to hold two jobs, it's very simple. If it does not conflict, if it is not against the interest of the state for you to hold these two jobs, then you get permission from the ethics commission to do so, or the ethics board to do so. The third point, any man who has honest intentions, and nonconflicting positions, need not fear this provision at all. It does not prevent him from holding two jobs in state government, or one in state government and one in local government, if they don't conflict with the state interest, and that's the way this particular section was designed. Another point: if this was designed to get rid of the "political hacks," the "political deadheads," who hold more than one state employment or hold a office and, as a consequence, get state employment, this is what was designed to prohibit. An honest hardworking individual, the tobacco chewers back home that some people are always talking about, don't have anything to fear from this, because it isn't aimed at them. They can hold two jobs; they can hold three; they can hold five, if they don't conflict with the state interest, and that's the way this provision was written and that's the impact it will have. The board of ethics could very easily make several general exceptions to this dual employment provision; they could very easily do this. They could make a hundred general provisions that are not against state interest. When a close vote is cast, sure, they might have to make a special decision, but nine times out of ten, or probably more than that, there wouldn't have to be any special decision. But let's get down to the real meat of it. People have brought up these "mom and apple pie" things like, "well, my poor old man back home, he's making twenty dollars a year, and you're preventing him from earning another twenty dollars at another job." No, we're not preventing him from doing that. We're not preventing him from doing anything like that... only if it's against the interest of the state for him to hold more than one office; that's what we seek to prevent, that's what the section proposed by the committee does. It does not prevent this man from holding dual employment with the state, only if it conflicts with state interest, and that's, I think, all we want to prohibit. I think the issue is clearly before us. Do you want a meaningless dual officeholding, meaningless dual employment provision such as we have now, or do you want something that is going to be a step forward for the State of Louisiana, and that's what it amounts to. People have said, well, what about the legislature? Let's adopt this and let the legislature do it. People have said, well, they haven't done it in a hundred and fifty years. Why should they start doing it now? We've got a

hold more than one statewide office. That's fine, but that doesn't apply to even a man holding two district offices. We have a state senator who is presently on the state board of education. Our law doesn't even prevent that, and I have a vision that this is exactly the kind of dual officeholding provision the legislature would come up with, and I don't think that's what the people of the State of Louisiana want. I don't think they want a meaningless dual officeholding provision. I think they want us to get "deadheads" off the payroll. I think they want us to get the "political hacks" off two and three political jobs, and that's what the committee proposal does. Now, it might need some cleaning up; I don't say it's perfect. I don't think anything that's been presented here is perfect, but it is so much better than this amendment that we now have under consideration. Let's defeat this amendment and work with the committee proposal. It might need a few changes, but, my gosh, let's take a step forward for good government instead of

Mr. Gauthier I see so many changes to be made, which ones are you talking about changing? What is what influencing my vote for this amendment?

Mr. Arnette Mr. Juneau, I don't know exactly the changes that this convention wants to make in that thing. Now, there are a couple of things that might upset me personally—might not. It depends on the way the argument comes out. But, if we don't have something solid in the constitution, we're going to have nothing at all.

Mr. Juneau Alright. Could you answer this question? As the committee is structured, and if you go along with the concept I don't see how you could change it, you would have a board of ethics that could make an exception to a constitutionally created definition of what is dual officeholding, is that correct?

Mr. Arnette I don't know exactly, but I think I could see.

Further Discussion

Mr. Gauthier Mr. Chairman, and members of the delegation, very quickly and very briefly, I agree with the principle that the committee proposal was trying to set forth; however, I suggest to you that possibly they didn't realize the scope of what they were doing, in some instances, and went too far and, in some instances, did not go far enough. I suggest to you that we should leave it up to the legislature to define and regulate dual employment and to define, regulate, and prohibit dual officeholding. I might say that we say in our amendment "the legislature shall," not "the legislature may," but that "the legislature shall." We've heard that the ethics committee or ethics board should determine when and where something is or is not, and that it doesn't adversely affect the public, and then go on whether or not the ethics board deems it does. Well, members of the ethics board have publicly stated "do not make us policymakers or lawmakers. Tell us what the law is and we shall enforce it." I suggest to you that the committee proposal has not done an adequate job; this is a legislative matter, and I ask you to leave it to the legislature. Mr. Chairman, if there are no other speakers on the list, I move the previous question.

Mr. Warren Mr. Gauthier, could you please state the buck? Could you in any way make it more specific? I would like to see the bill.

Mr. Gauthier No, I cannot do that.

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Mrs. Warren If it affects him, if it was in his interest, how could you then say it wasn't also in the interest of the people, whether it was or not?

Mr. Gauthier I agree with you.

Mrs. Warren Alright, then, so what we're doing ... passing the buck. We've been doing it six months, and we've been working on it six months and we can't come up with nothing, so you delegates just go home because we, in this committee, can't come up with nothing. This is what you're saying, is that right?

Mr. Gauthier I don't follow you completely, Mrs. Warren, but if you're saying we're passing the buck to the legislature, I would have to agree with you to some extent. Yes, we are passing the buck, simply because I don't think we want to outline in this constitution what exactly dual employment is, what dual office is, and then go into the list, from what I could understand, it could entail a very long list of what dual employment is. I feel, at one point, it will have to be listed, and certainly not in this constitution.

Mrs. Warren One more question, real clear. Now, the committee... Mr. Anzalone said the committee had worked on this for six months, and they couldn't come up with nothing.

Mr. Gauthier That's correct.

Mrs. Warren Are you all saying that just because you worked on it six months that we can't spend a little time and do something with it?

Mr. Gauthier No, I'm not saying because I wasn't on the committee, but I don't think we have the time now, and I don't think the constitution is the place to do it. I think, rather, that we should mandate that the legislature do it, and that's what this amendment does, Mrs. Warren.

Mrs. Warren To pass the buck.

[Previous question ordered. Quorum call: 109 delegates present and a quorum. Amendment read. Record vote ordered. Amendment adopted: 66-29. Motion to reconsider tabled.]

Amendment

Mr. Poynter These are technical amendments [by Mr. Casey] going to the title of the proposal.

On page 1, delete lines 6 and 7 in their entirety and insert in lieu thereof the following: (it deletes the title and inserts this)

"Defining and regulating dual employment and defining, regulating and prohibiting dual office-holding in state and local government".

An amendment to the title.

Explanation

Mr. Casey Mr. Chairman and delegates, the Clerk, I believe, has already given the explanation. In order to conform to the Committee Proposal No. 23 as amended now, we're merely correcting the title to indicate that dual employment will be defined and regulated, and dual officeholding may be defined, regulated and prohibited by the legislature. That's merely what the title does. It's merely technical.

[Amendment adopted without objection. Previous question ordered on the Section. Section passed: 102-11. Motion to reconsider tabled. Previous question ordered on the Proposal. Proposal passed: 104-10. Motion to take up other orders. Record vote ordered. Motion

adopted: 67-40. Rules suspended to allow Committee on Legislative Powers and Functions five additional days meeting time to study Style and Drafting recommendations.]

Report of the Secretary [1 Journal 626]

Personal Privilege

Mr. Fontenot Fellow delegates, if you give me your attention for a minute, I'll try to explain some of this information that's being passed out at the present time by the research staff. I went to the tax commission yesterday, and I got some information concerning the assessment rolls, which I didn't have the information during the committee discussion on this proposal on our Revenue, Finance and Taxation Committee. But, I do have the information now. For what it's worth, look over it and see what your assessment rolls in your parishes look like. Go over it with your tax assessor. Ask him what it means, and next week whenever you have to decide on some of these very crucial issues, especially concerning homestead exemptions, raising them or lowering them, see what effect it will have on your tax rolls. I was one of the members on the committee on Revenue, Finance and Taxation. I was the youngest member, and I probably had less knowledge of the whole tax structure. I really want you to get this information so next week whenever you do start voting, you can make some kind of intelligent vote. I don't necessarily ask you to vote the way I vote because I'm not always right, but I do want you to have some information behind you that you can make an intelligent vote. This information, if you look at it very closely, will be helpful to you. I hope so. Thank you very much.

[Motion to adjourn to 1:00 o'clock p.m., Wednesday, October 17, 1973. Record vote ordered. Motion rejected: 54-54. Motion to adjourn to 1:00 o'clock, Wednesday, October 17, 1973. Record vote ordered. Motion adopted: 60-55.]

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at least seven amendments to our present constitution, and changing some fifty statutes and our laws to guarantee to the people that their property taxes will remain reasonable and will not be shifted from one taxpayer to another to any great extent. In closing, please understand that the total proposal you have received, so-called "the assessors' plan," is based on a meaningful homestead exemption, which would not only allow the exemption, but would, in fact, reimburse the taxing districts with those monies lost through this program. I ask your favorable consideration to this proposal, with the recommended amendments, and I'll be happy to answer any questions that you may have.

Questions

Mr. Burson Mr. Mire, one question that I haven't been able to get the answer to in the reading and on that I've done--or I get different answers from different people depending who I ask--is what basis does the Louisiana Tax Commission use for taxing public utilities? What percentage of value?

Mr. Mire There are various bases by which they arrive at values for public service properties. Some is what they call schedules, or so much per mile for lines, or for pipes or for something like that, and that mileage assessment is based on their cost when they, in fact, put that line down or put that set of wires out on the poles. Some other properties are based on the present cost today. They use different bases...

Mr. Burson Well, then, what percentage of that basis do they assess it?

Mr. Mire Well, in some cases twenty-five percent of it, but it could be a cost that some of the intangibles are taken out of. So, it's a cost of the real property, and not the total cost of the installation of the total thing.

Mr. Burson Now, is it correct to say that this Section 1 of the committee proposal would leave the assessment of public utilities to the Louisiana Tax Commission, as it is today?

Mr. Mire No. It would leave it to the Louisiana Tax Commission, but they would, in fact, have to now assess it at the fair market value, and fifteen percent of that fair market value.

Mr. Burson They would have to use the fifteen percent instead of the twenty-five percent, or whatever else they were using right now.

Mr. Mire Yes, sir, and it would have to be based on fair market value, and not on cost or, you know, a broken down cost or schedule.

Mr. Burson Well, the problem I have is: how do you decide the fair market value of a pipeline, a thirty-six inch pipeline, in the ground?

Mr. Mire Well, I'm sure that that is a problem to many people, but there are, I can assure you, ways of appraising pipelines or any property, or anybody's property. They have to have some measurement of their wealth somewhere, in stocks, in accounting, and, of course, we could in fact demand these documents.

Mr. Burson The reason this problem concerns me is in St. Landry Parish we have a hundred, three million assessment total and twenty-three million of that is public utilities, so it seems to me that if we drop them from twenty-five percent down to fifteen percent that we've lost approximately forty percent of one-fifth of our total assessment under the present scheme.

Mr. Mire It's the consensus of the assessors and the Louisiana Tax Commission that if public utilities are assessed at fifteen percent of fair

market value, statewide, they will probably appreciably go up instead of down.

Mr. Burson Would you believe me if I told you my assessor doesn't see it that way?

Mr. Mire Well, I would probably believe you, yes, but he probably hasn't looked in depth at it because it is positively worth more than what they are using on their reports today.

Any other questions?

Mr. Champagne Mr. Mire, are you in agreement that in all probability this convention should settle this on a statewide basis, rather than leave it to parish by parish, because if we do not, we may involve some problems in courts later on?

Mr. Mire Yes, sir, very much so.

Mr. Champagne So, we should definitely try to the best of our ability to settle this problem on a statewide basis?

Mr. Mire Yes, sir, and have a statewide uniform base.

Mr. Kean Peg, one of my difficulties is trying to understand the categories or classifications that you've broken down your property into. One of the questions I have is what does the committee define as improvements to residential property? Would that include an apartment building, for example?

Mr. Mire Yes, sir, it does, sir. It will be all residential improvements.

Mr. Kean So, that an apartment building which is productive of rent, used commercially, would then be assessed at ten percent of its value, while the inventory of the corner grocery store would be assessed at fifteen percent of the value.

Mr. Mire That's absolutely right.

Mr. Kean What is the basis for the committee's distinction in that regard?

Mr. Mire Well, we feel that residential properties, you will in fact be helping the renter, the homeowner by having this particular assessment; and then on your businesses, they have ways of writing off and charging off some of these taxes a little bit better than the residential people.

Mr. Kean ...I believe you made some comment about other amendments. Did you say there was a proposed amendment with respect to the homestead exemption, and if so, what is your recommended change?

Mr. Mire I really think we ought to wait, you know, to when we discuss the homestead exemption section...

Mr. Kean Well, it makes a difference to me at this point because if you put certain property on, at ten percent of its value, and then have a high homestead exemption, you are in fact creating an exemption rather than a classification in your first section. Are you not?

Mr. Mire Well, then, in that case the majority of the committee decided to, in fact, amend our proposal to four thousand dollars for homestead exemption and five thousand dollars for veterans and people over sixty-five.

Mr. Kean Now, one other question: in East Baton Rouge Parish, as I understand it, talking with the assessor, he puts inventory, for example, on the assessment rolls at thirty percent of value. This would reduce it down to fifteen percent of value.

Mr. Mire That's correct.

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Mr. Kean Well, East Baton Rouge Parish, for example, make up its tax base under those circumstances?

Mr. Mire Again, Mr. Kean, I think if you'd question it a little closer, that if he does get audited reports and actual inventory figures, that he probably feels that he will not lose any tax base in the East Baton Rouge Parish.

Mr. Kean Well, he says he will, and that's what concerns me.

Mr. Mire O.K., I'm going again by the Louisiana Tax Commission. These are the people that accept these reports. Of course, they are certainly checked by the assessor, but if we get accurate inventory figures, statewide, from the business people, although many of them are using twenty-five percent and twenty percent, we feel that at fifteen percent we're not going to lose any tax base there.

Mr. Kean You would then anticipate, for example, that insofar as land is concerned, on which there are no improvements, that the raising of that to ten percent would then offset the loss on other property when you bring it down to fifteen percent?

Mr. Mire There will be some shift in where the value is going to be, and there will—there's no question about that—but exactly how much, where it'll go, I don't know. I can only answer in my parish as to what would happen.

Mr. Kean Well, this is what bothers me is trying to find out, in light of these percentages, where the shift in the tax burden is going to go, and can your committee tell us that?

Mr. Mire Well, in various parishes, it's going to go to various properties, depending on the practice in that particular parish, but, now it's going to be uniform statewide. It has not been that way before, as brought out by the court case. Now it will be.

Mr. Kean But, you do acknowledge that these percentages, with varying percentages between different kinds of property, will bring about an adjustment in the tax burden and will place on some properties an increased tax burden.

Mr. Mire Yes, but we feel that the percentages that we have proposed will shift the burden of taxation the least from the people that are presently paying it today.

Vice Chairman Casey in the Chair

Mr. Abraham Mr. Mire, in the Paragraph (E), where you are saying the legislature may provide for the determination of use value, or the use of a use value factor in determining the fair market value or the assessment ratio, what do you do where you have, for instance, two pieces of commercial property side by side within a municipality, and one is being used, say, as a... for a department store, and as such that particular piece of property has a very high fair market value because it has an operating business on it, whereas, right next door to it, you have a piece of property that, maybe there are a couple of homes on it, and these homes are being rented out for beauty shops and this type thing, and, as such, do not produce but very little revenue? Is any consideration being given to use value in that determination?

Mr. Mire No, sir, in the proposal, the use value will be... is being proposed to be used on horticulture, agriculture, and that sort of land.

Mr. Abraham Well, don't you feel that that would pose an inequity, that simply because this person owned a piece of commercial property which could

be probably developed, or if you had a buyer for it, that the income from this beauty shop that might be located in this old home on this piece of commercial property does not actually pay the taxes, or barely pays the taxes?

Mr. Mire I believe that the appraisal concepts of today consider the highest and best use, and certainly, the use of the property is one of the considerations, but you can't get around the normal appraisal norms, if you're going to have a statewide uniform assessment, and adhere to the constitutionality of the suit and laws in the state. You'll have to apply it like the law says apply it.

Mr. Abraham One other question: you stated a while ago that in assessing the inventories, and so forth, fifteen percent that if they got the figures, which they normally get off of an income tax return or something like that, that the assessors would actually get more money... rather the parishes would get more money. Well, on what basis, then, are you going to arrive at the fair market value for homes and businesses?

Mr. Mire Well, this would be based on some appraisal practices on homes and businesses, and, of course, on inventories income tax returns are not always the most accurate figure in getting an inventory.

Mr. Abraham Well, under the present constitution, weren't all these homes, businesses and property now supposed to have been based on fair market value, and everyone is supposed to be using some standard appraisal practices?

Mr. Mire That's absolutely right.

Mr. Abraham But, they have not been doing so, have they?

Mr. Mire That's absolutely right.

rum. Motion to suspend the rules
for additional time for ques-

Mr. Pugh My question was along that line. I wanted to know, and perhaps Senator Rayburn can give this to us, the vote on each of these sections and subsections within the committee. I have found difficulty in this convention when a committee comes up and you think that's the full thought of that committee, or a hundred percent, and then it turns out that some of them oppose it. Can you give me the vote on these subsections and the section?

Mr. Mire I can roughly give you... that supports this first section. That's good.

Mr. Pugh I am not concerned with the subsections of this section.

Mr. Mire I follow you. Actually, in Section 1, I think we're probably eighteen out of twenty-three supporting Section 1... with the changes.

Mr. Pugh Thank you.

CHAIRMAN CASEY IN THE CHAIR

Mr. Jenkins Mr. Mire, when you say that if the legislature... the highest and best use, or the use of the property is one of the considerations, but you can't get around the normal appraisal norms, if you're going to have a statewide uniform assessment, and adhere to the constitutionality of the suit and laws in the state. You'll have to apply it like the law says apply it.

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uniformly?

Mr. Mire Let me say this. The assessment on a statewide basis is, in fact, based on the equal protection of the law. Any other proposal, other than on a statewide basis, would infringe on equal protection. But, assessment by classes have been upheld by the United States Supreme Court as recent as this year, that you can even have classes that carries no taxes as versus some that carries a certain percent of taxes, and say that it's absolutely permissible.

Mr. Jenkins If, in fact, this plan does meet the legal requirements of the concept of equal protection, don't you think that it certainly violates the spirit of such a law in that it tends to arbitrarily help or hurt different categories of people, depending on the types of property that they have and the uses to which they're put?

Mr. Mire No, I don't feel that way, Mr. Jenkins. I honestly feel that this will hurt the least amount of people possible. In reference to the people who carries the least or less percentage, which would be residential properties, these people have no way of depreciating these properties. They pay on appreciated value instead of just cost values, and I feel that they are going to continue to pay throughout the years and never can write this off except the specific tax dollar, and I feel that nobody's being discriminated against.

Mr. Jenkins Well, I have one final question then. Don't we have, though, a mechanism to take a count of the question you raise, namely, the homestead exemption? Since we have a homestead exemption, shouldn't all property be assessed at the same ratio, and then if we want to give the homeowner a particular exemption, we can do that? But, why should we assess the homes at a different ratio from other property and then come back with a homestead exemption as well?

Mr. Mire You can't look at just homestead exemption. There are many, many, many other exemptions that you have to look at, such as farm implement exemptions, industrial exemptions, the various exemptions for different businesses, and some of the inventories, some of the imports, and you've got to look at the whole picture, and this is what we've tried to do. I'm not saying that your argument doesn't have some merit, but we've considered it, and we feel that we've come up with what will be fair to most of the people.

Mr. Lowe Mr. Mire, Mr. Kean asked you a series of questions, and I think in that series of questions he hit the meat of what we debated for several months. I'm not sure that the delegates got the complete idea of the problem that we had. Don't you agree that our major problem, in all of our deliberations, was trying to establish in our minds what the tax base, at the present time, really is?

Mr. Mire That's absolutely right, Mr. Lowe.

Mr. Lowe And if we knew what the tax base really was, that we could put a pencil to it and tell what actual effect we were going to have from the various percentages and homestead exemption that we've been dealing and talking about?

Mr. Mire You're absolutely right, and the only people that would have any dramatic tax difference in what they're paying today are those who were not assessed properly in a specific class.

Mr. Lowe Right. Now, the next question is, don't you believe that we have to have some difference in classification, and he addressed his question to classifications—don't you agree that we have to have some lower classification for residences and residential property as compared to commercial and industrial property? Don't you think that we have to have a higher percentage on commercial and

industrial properties to maintain the present tax base that we have?

Mr. Mire That's absolutely true, sir. That's exactly how I feel.

Mr. Lowe So you would agree that if we came up with one percentage that we would have a much larger shift in the tax burden from one segment of the community—residential community to the business community or vice-versa—depending upon where that percentage was established?

Mr. Mire Yes, sir. I definitely think we'd have a much greater shift of the tax burden.

Mr. Lowe So we want to try to stay away from one percentage, and stay with some difference between the two percentages between residential and commercial?

Mr. Mire Yes, sir.

Mr. Lanier Mr. Mire, I'd like to direct your attention Subparagraph (D) dealing with the review of the assessments by local government and by the Tax Commission. I note that this proposal provides that this review by the governing authority and the Tax Commission will be in accordance with procedures established by law. Am I correct that in the present constitution, the Tax Commission has authority to require uniform assessments, and that's in the constitution?

Mr. Mire Yes, sir.

Mr. Lanier Is that contained anywhere in this proposal?

Mr. Mire Yes, it is.

Mr. Lanier What paragraph?

Mr. Mire The proposal itself says that properties will be assessed uniformly statewide, and then it only says who will assess specific properties, you see. It says "and the assessor will assess a certain type of property and the Louisiana Tax Commission will assess the other type," but they are charged with the responsibility of using fair market value.

Mr. Lanier Well, suppose somebody doesn't use fair market value, is it your opinion that, even without authority in the constitution, and with no statutory authority, that the Tax Commission could require an assessor to assess at fair market value?

Mr. Mire Well, I don't follow your question that this proposal does not provide for fair market value assessment.

Mr. Lanier I know it does, but I'm getting at... suppose somebody doesn't?

Mr. Mire Well, the legislature will have to provide for a police action of a sort that will make it positively that the local governing authority and/or the Tax Commission, both jointly or individually, can, in fact, come in and check and make the assessor do it under certain penalties.

Mr. Lanier Is there any provision in here that says that the legislature shall do this?

Mr. Mire Well, of course, it says that they will establish the law, and I assume that they will because there will be many, many local taxing authorities looking at them to do so. This was discussed at length, and we certainly would like to be positive about that that it will have to be done. We feel that the court order will mandate it, you see. You know, even so.

Mr. Lanier What is the present law with reference

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authority to review an assessment?

Mr. Lanier Well, presently, he can review the tax roll and recommend to the Louisiana Tax Commission changes. This is done on an annual basis.

Mr. Lanier Can the local government itself, make any changes or does it only recommend?

Mr. Burns I personally recommend to the Louisiana Tax Commission.

Mr. Lanier Under the present constitution, does the Tax Commission have the authority to mandate the assessor to make changes?

Mr. Mire Yes, sir.

Mr. Lanier But, that authority is not specifically granted in this proposal, is that correct?

Mr. Mire No. We would like that to be statutory.

Mr. A. Landry Mr. Mire, just like Mr. Burson from St. Landry, Lafourche Parish is very much interested in pipelines, and you mentioned a while ago that they were assessed at twenty-five percent of the cost of the pipeline, is that correct? Did I understand you to say...

Mr. Mire Not necessarily. Some pipelines carry a schedule, like a hundred dollars a mile, or a thousand dollars a mile, or fifteen hundred dollars a mile, depending on the size of the pipe. But, that schedule was based on cost, but that cost might have been twenty years ago. The procedure that they're using is as antiquated as the procedure most of the assessors are using.

Mr. A. Landry In other words, at the present time as I'm looking at a schedule by the Taxing Commission for a thirty-six inch pipeline assessed at twenty-five thousand nine hundred dollars a mile, what assurance do we have, when we seal it at fifteen percent, that this assessment is not going to be reduced?

Mr. Mire Well, the only way you can reduce it is if you have a schedule that is lower than the one that is now.

Mr. A. Landry Okay, for that pipeline.

Mr. Mire Do you think that a thirty-six inch pipeline—one mile of it—will cost, say what, a half a million dollars? Then fifteen percent of that, what...

Mr. A. Landry I don't know what it costs.

Mr. Mire Not cost, but worth. The only assurance you'll have is that it will be assessed at fifteen percent of what the pipelines fair market value is, you see. Of course, we feel that it is going to be certainly as much, if not considerably more, than the schedule that they are presently using.

Mr. A. Landry So, the only way you can reduce it is if you have a schedule that is lower than the one that is now.

Mr. Mire Yes.

Mr. A. Landry Alright. The second thing, I have one more question. In regards to sealing in pipelines—and I'm sure that you're familiar with the fact that over a period of years that we have seen a fluctuation of values of land in the state, what happens if, in the future, due to economic reasons that the value of property drops? What happens to the assessment? I have seen some cases where the value of property has dropped and the assessment has not.

Mr. Mire Well, of course, you have no protection on that today. If the economic situation of a

community goes to where the assessor has to reduce the assessment based on whatever formula he is using, your taxes are going to just be less than they were before. That's going to be the same thing you have today, you see. You have no guarantee today that the assessment...

Mr. A. Landry We have no guarantee on the maintenance millage at all.

Mr. Mire No, sir. Well, I mean, it can't be. It's not a guarantee that you have on the maintenance millage.

Mr. Burns Mr. Mire, what gives me a little concern is, if you raise a homestead exemption from two thousand to four thousand, naturally that's going to double the amount that the revenue sharing fund is going to have to come up with, is there any question as to whether they will be able to provide that additional money?

Mr. Mire Well, Mr. Burns, we don't feel that it will double it because you have to consider that every veteran today, is enjoying five thousand dollars homestead exemption. That's the veterans of World War I, World War II, Viet Nam, Korea, you see. So, we feel that you're probably talking about maybe twenty-five percent of the exemptions that would increase, and then, we don't think they would all go to four thousand, because there are many of them that would stay below based on ten percent. There are people that are living in eight thousand dollar houses, and, you know, this sort of thing. So, we don't think that that percentage would be... that that money would be doubled. If anything, it...maybe go up twenty-five percent, if that much.

Mr. Burns In my parish, St. Tammany, they have an unusual situation, being a suburb of New Orleans. Half of our assessments on lands, and homes and residences, is represented by homestead tax exemption.

Mr. Mire You're absolutely right that your parish, and there's a few others that are just exactly that way, and this is one reason why we think a meaningful homestead exemption is important. In my parish, by contrast, only sixteen percent of the homestead exemption is that amount of taxes collected in my parish.

Mr. Burns In other words, you are of the committee and you all don't think there will be any problem with reference to that?

Mr. Mire Well, we have gotten...the assessors have talked with the governor on this, and immediately after this uniform tax base would be put in on a statewide basis, we would get with him and he offered his support to some meaningful, statewide reimbursement program of a sort to make homestead exemption what it's intended to be.

Mr. Goldman Mr. Mire, regarding inventory assessment: What is the present, generally around the state, assessment on inventory?

Mr. Mire It varies greatly, but the average is twenty percent.

Mr. A. Landry I have heard that some parishes are as high as thirty percent.

Mr. Mire Some parishes...yes, sir.

Mr. A. Landry Some parishes...yes, sir. I have heard that some parishes are as high as thirty percent.

Mr. Mire Well, the only way you can reduce it is if you have a schedule that is lower than the one that is now. I have the sufficient fund to hire these sorts of people. If we have a sufficient fund, we will have to have to...it's going to have to be a new type

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of assessor's office, as I mentioned about maps, and about staff, that could, in fact, make these audits or be qualified to make them.

Mr. Goldman Would you agree that although all businessmen in this state are strictly honest, they have various means and ways of providing their inventory values at much less than what they actually are?

Mr. Mire Yes, I believe some people calls that a sophisticated bookkeeping system, or something, but I would agree with you, sir.

Mr. Goldman If the tax on inventories is fifteen percent, would you agree that it would provide the incentive for the business people to give a truer value of their inventories, and, also, the assessor's office could check them a whole lot better?

Mr. Mire That's absolutely so, and a very good point because at one time the disparity was as much as from seventy-five percent to, say, fifteen percent, and you couldn't hardly blame a business man to try to not waste more in line with the other taxpayer.

Mr. Goldman Would you agree also that when we talk about the small businessman as versus the large wholesaler, distributor, businessman, that it's easier at the present time for the tax assessor to really know what the value of the small businessman's inventory is, and he pays through the nose, whereas the larger business possibly gets a whole lot more break now than he would if we got the true inventory value from everybody?

Mr. Mire There's no question about that. You're absolutely right.

Mr. Roemer Peg, did you address yourself to the problem of the state not now being in the ad valorem tax business, but someday might be? Have you talked about that? Shouldn't we exclude the state from the property tax business? We don't in this proposal. What's your feeling on that?

Mr. Mire My personal feeling is that the state should be allowed to, in the future if they deem necessary, to get back in the ad valorem tax field. It could be to have a meaningful homestead exemption, or even if our oil minerals would continue to be depleted, very possible we'll have to go that route.

Mr. Roemer So, you're saying that we should allow the State the option, at some future date, if the conditions warrant it, to get back in the ad valorem tax business.

Mr. Mire Absolutely.

Mr. Roemer Alright, and that's opposed, kind of, to the Total and parochial recommendation, Section 37, which would exclude them from the property taxes.

Mr. Mire Yes, it is.

Mr. Roemer I just wanted that brought out. I happen to support your position.

Mr. Mire Thank you very much. Thank you very much for bringing it out.

Mr. Shannon Mr. Mire, for my information, can you tell me what the consensus of opinion was of what fair market value is?

Mr. Mire Well, fair market value is what a free seller would sell to a free buyer, some certain property, or what the market would, in fact, bear. Even though it would not be, for instance, for sale, but it has to be what appraisals would arrive at.

Mr. Shannon Well, if you don't have any record of that, how are you going to determine it?

Mr. Mire There are many ways to determine it. There are very few properties that some light property doesn't sell somewhere along the way. If it's some that never sells, that you have nothing to go by as to actual sales, then you'd have to look at their worth and see what, in fact, it is worth in some sort of bookkeeping system to be able to tell what it's actually worth.

Mr. Shannon Alright, let's get down to Section (E) there, Paragraph (E). Can you give me a little idea of what your use value is?

Mr. Mire Well, of course, use value--there's about thirty-one of the forty-eight states presently using this today--and the legislature has set different criteria in different states, as at... arriving at use value, but it would be based on the productivity of that land and what you could afford to buy it for producing--what that particular property is producing, not that specific property, but what that crop, in general, is producing in the area. That's generally the concept.

Mr. Shannon Now, again, in Section (C), you say the assessor shall determine the fair market value, and you go in (E) and you say the legislature may. Why differentiate here?

Mr. Mire Well, the assessor shall determine the fair market value on all properties except the public service properties. The assessor will determine the use value, as prescribed by the legislature, on farmlands. He'll just have to hire the qualified staff to help him do this.

Mr. Shannon Do you have any idea what this cost might be?

Mr. Mire No, we're studying this, and it'll be considerable.

Mr. Shannon Thank you.

Mr. Mire But, this is not something that we've asked for. It's something that the courts have said we must do.

Mr. Casey Mr. Mire, I just wanted to relate the percentage factors on page one, whether it be five percent or ten percent, that's not a main concern of mine at this time. I'm just trying to relate those percentage factors to Section 7 when we talked about increasing and decreasing the millage on property. Am I correct in assuming that if you come up with a low percentage, for instance, five percent on land, then chances are we would have to increase our millage; whereas, if you had a high percentage, let's say twenty percent, then some parishes might have to decrease their millage? I'm just trying to relate this factor right now.

Mr. Mire Well, of course, if you'd listened to my address at the outset, and I'm not, you know, saying that you should have, but I made that point that I thought, although our percents were low, that probably ninety percent of the municipalities and parishes would, in fact, have a higher tax rate, and would have to adjust millage downward. There are a few sections, and I know New Orleans is one, and I know maybe Caddo and a few others is where you might have to increase the millage. But all the millage does is measure the amount of dollars that you, in fact, pay out of your pocket, and whether to go up or down based on your tax base will not reflect how many dollars...it will not reflect anything but the amount of dollars you pay which would be the same with this millage adjustment. I have never, in my twenty years in office, had anybody come up and say, "oh, my millage increased this year, and I've got to pay more taxes." They've always called and said "I've got to pay a hundred dollars more taxes this year, what hap-

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paying less taxes this year, what happened? They don't say the millage decreased or increased. People themselves don't really follow the millage.

Mr. Casey May I ask this? What was the discussion in the committee if you arrived at a percentage factor on land of, let's say, twenty percent--just pulling the figure out of the sky--and therefore, one of the parishes, where there is a high millage rate, let's say, ninety mills, may have to pay four or five times more than other properties, even though you'd reduce the millage on all properties equally, they would still have to pay four or five times more taxes on that class of property.

Mr. Mire Well, of course, what would happen, you would shift the tax burden from other properties to land, because land, traditionally, has been assessed at a low rate. No matter how much you reduce the millage by bringing up that value, say four or five times more than other properties, even though you'd reduce the millage on all properties equally, they would still have to pay four or five times more taxes on that class of property.

Mr. Casey And would that be true if you had, let's say, no classification in all property whether it be land improvements on residential property, and all property had the same percentage?

Mr. Mire Yes, that would be true where the land would certainly have to have absorbed a lot more taxes than they are presently absorbing...on the statewide basis I'm speaking of in all cases.

Mr. Casey Was any percentage discussed where there would be a minimum amount of adjustment necessary? I'm talking about either twenty percent, fifteen percent, ten percent. Where does the least adjustment occur...at what percentage? Did you all have any statistical information?

Mr. Mire Well, the best information that we could get from all of the parishes, of which forty-three of them responded to, basically what they felt their properties were being assessed today, it seemed like twenty, fifteen, and ten was the one that would more follow what's happening today. We found our position...

Mr. Casey Twenty, fifteen, and ten what?

Mr. Mire Twenty percent on inventories and public utilities, and this sort of stuff, fifteen percent on improvements, and ten percent on land, which is what we initially had suggested, or the assessors had initially suggested, but, with a far greater homestead exemption as we presently have.

Mr. Casey Alright, well, that would follow then. What were those figures taken into consideration with the increased homestead exemption? How does this affect in those percentages, because that's certainly an important factor?

Mr. Mire In adjusting the percentages, we, of course, adjusted the homestead exemption. We brought the residential improvements down from fifteen to ten percent allowed for an adjustment in homestead exemption.

Mr. Casey Were those percentages, twenty, fifteen, and ten, considered in relation, though, to the existing homestead exemption of two thousand dollars? Those are the, apparently, the average percentages that are used at this time with a two thousand dollar homestead exemption.

Mr. Mire This would be, if you take everybody's and this is what we arrived at using every parish...yes.

Mr. Casey When we discuss timberland?

Mr. Mire Which, of course, we're still at that particular figure with the homestead of two thousand

percent on inventories and on public utilities--we're down to fifteen percent on that and we went down on improvements to ten percent...on residential improvements to ten percent.

Mr. Casey And those percentages are statewide from these forty-three parishes. Is that what you all had calculated?

Mr. Mire Yes, it was roughly, on lands, was about eight percent so we had gone to ten percent to try to, at the time, satisfy some of the higher assessed areas, but we weren't able to really get on that.

Mr. Hernandez Mr. Mire, my question relates to Paragraph (E), especially timberlands. I would like to preface my question by making just a few short statements. The first place, as you well know, timber is the only renewable natural resource that we do have. The amount that an acre of land produces in timber depends almost entirely on the way it's handled, the management--that is, planning the way it's planted or whether it's planted at all or not--your fire breaks. All of these problems, there are several that go into determining how much acre of land produces, and the production of that land is directed to the economy of a parish. In other words, it's related--closely related--the production and the economy of the parish. Now, my question is simply this: In Paragraph 3 if the legislature determines the tax value or an assessed value of the land, timberland, that it have a tendency to discourage what we have been trying to do as to coerce or even force these large landowners to plant this land, and care for this timberland to increase the production?

Mr. Mire Well, Mr. Hernandez, you know, good point at the beginning of what you stated. As you know, it had to be well thought out of the able to, in fact, set out a real good land use concept. This is why we leave it to the legislature, and let me say that the greenbelt and land use concept is really the thing the foresters and the agriculture and horticulture people want themselves. They feel that in the legislature they can have it put together in a workable way, and so we're sort of acquiescing to their demands on this.

Mr. Hernandez Mr. Mire, I'm speaking for the parish, the economy of the parish now. If this is made statewide to assess this at certain amount, we'll be on land use--won't that have a tendency to discourage...not discourage, but I mean, give the large landowner a loophole to not exert his full efforts toward production on that land which takes away from the economy of the parish?

Mr. Mire I feel that the legislature, in the way that it is going to put some requirement in that the man will have to derive some revenue from it, will certainly have to put some deterrent effort, you know, in either agriculture, horticulture, or timber growing works before he can be assessed at land use, and I think that the legislature in that parish will have evidence to that effect. We will not let somebody just get by with certain use, say, to cover up for holding land for speculation, or something like that.

Mr. Hernandez Yes, sir. Now, you just...before that, this parish does not...I mean this paragraph does not take into consideration that the assessor will be able to assess the land at a value that is not reflected in the legislature. So I would like to question with that, now, will the assessor, under this paragraph, will have the right to assess the land at a value that is not reflected in the legislature?

Mr. Mire Yes, sir. Well, I have to admit that the legislature does not have the authority to assess the land at a value that is not reflected in the legislature. It will be up to the legislature to come up with, and will

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participate in trying to come up with the work of the law on that.

Mr. Hernandez Thank you very much, sir.

Mr. Mire Alright, sir.

Mr. LeBlau Mr. Mire, you were mentioning the statewide uniform assessment. Would the assessment in each parish be done by the parish assessor or would one, say, statewide board do that assessing?

Mr. Mire No, sir. Without proposal it will be done by the individual assessor...in each parish or taxing district. Now, it will be supervised by the Louisiana Tax Commission. They'll have, certainly, supervision, and they'll have a right to come in and see that he is, in fact, doing his job, and they'll have a right to penalize him, and the local governing authority will have that same right.

Mr. LeBlau Well, it was mentioned awhile ago about the forbidding the state to go back into the ad valorem tax business--I think Mr. Roemer mentioned that--and the state is not now in the ad valorem tax business.

Mr. Mire No, sir, they're not, but they are not prohibited from going back; they just, you know, are not in it. But, they are not in fact prohibited from going back. This is all we want to do is just not prohibit them from going back. We don't want to tell them to go back--leave that, you know, to you all, to the legislators.

Mr. LeBlau Yes, sir. Well, what I was getting to is since the state is no longer in the ad valorem tax business and collects no ad valorem tax from property owners throughout the state, it seems to me that the governing authority of the parish should be allowed to grant as much homestead exemption as they wanted--say, if we provided a minimum amount here and allow the parish governing authority to set their own homestead exemption because they are the ones who are really involved with the use of the taxes that they collect in each parish.

Mr. Mire With a minimum homestead exemption in the constitution on a statewide basis, I personally would have no objection to your concept.

Mr. LeBlau Another thing; Mr. Mire, you mentioned on this uniform proposal, statewide proposal: assessor's office would be required to probably hire more personnel, probably a whole lot more equipment, etc. I think now that the assessors are allowed a certain percentage by the legislature of the amount of taxes that are collected; am I correct?

Mr. Mire Well, no, your expenses are fixed by the legislature which we, in fact, get through a percent of the collectable taxes, but we don't have a fixed percent like the sheriff's office; we've got just a fixed amount by parish.

Mr. LeBlau I see...

Mr. Mire Based on a schedule, you know, that we have had for the last six years or so.

Mr. LeBlau In other words, in order to provide for this additional equipment, etc., you folks would have to approach the legislature to increase that...your office expense in that particular manner.

Mr. Mire Positively--and justified to you all--positively.

Mr. LeBlau Thank you.

Mr. Denberry Mr. Mire, as I understand your committee's proposal with the amendments which you

have suggested, it would mean that residential property of a value of forty thousand or fifty thousand, depending upon whether the homeowner was a veteran or over sixty-five, would be exempt from all taxation; is that correct?

Mr. Mire It would be exempt of all taxes covered under the Homestead Exemption Act, not special districts and such things as that that aren't and certainly not of municipal taxes in any area but New Orleans.

Mr. Denberry Now, are there any figures which reflect the average valuation of a house today, a residence which is covered under the homestead exemption?

Mr. Mire I think the Census Bureau, you know, has those type of figures, but they are figures that are now a few years old, and under the appreciated values of the materials and labor and what have you in building homes, this is hard to keep up with on a day-to-day basis. But, I would personally estimate that I guess roughly twenty thousand or twenty-five would be the house that's being built, constructed as a normal residence today.

Mr. Denberry And that house under the present practice, would that have a complete homestead exemption today?

Mr. Mire Yes, particularly in New Orleans. But, in all other municipalities they would have to pay based on what taxes these cities pay. This is the point I want to emphatically make that every other municipality in the state, when we do revalue these properties, are going to have a larger tax base, and these homeowners are going to have to pay more taxes to the municipalities, except the city of New Orleans.

Mr. Denberry Now, one final question, please sir: under the present constitution the assessors are supposed to assess property at what we now call fair market value--I think the language is slightly different...

Mr. Mire Its actual cash value...yes, sir, Mr. Denberry.

Mr. Denberry Would you say that, in general, the assessors throughout the state have not followed this practice?

Mr. Mire I would positively say that. I think that all of them use actual cash value to determine the percent that they in fact assess. But, this is something that they've been doing for time immemorial.

Mr. Denberry I understand that, but what I meant was, do you think they start with actual cash value?

Mr. Mire Oh, yes, sir. I do believe that they have to have some specific norm to follow, and I don't know how you can determine whatever percent you are going to use without going to actual value.

Mr. Denberry Would you say that the assessors throughout the state have customarily revalued property every five years?

Mr. Mire No, sir, we have not. I think the majority of them will reassess based on sales or when the property is being transacted.

Mr. Denberry Current sales...

Now, is there anything in the proposal which you feel would guarantee the citizens of the state that the assessors would now assess or appraise at the fair market value, and then apply whatever percentages the constitution...

Mr. Mire In our proposal it states that we will have to reappraise within every five year period. I feel that the legislature will have to provide

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they will in fact mandate the assessor under penalty to do this. This is the only way I think we can go to have an equitable, fair assessment program statewide.

Mr. Denney And the right to enforce that law, would that be...you think...should that be given only to the attorney general, to the district attorney, to the tax commission, or to any citizen?

Mr. Mire I think the local...well, I think every citizen would have the right to attest it.

Mr. Denney

Mr. Rayburn Mr. Chairman and fellow delegates, I'm going to ask various members of our committee to explain the following sections. I would like for Mr. Alario to explain Section 2.

Mr. Alario Mr. Chairman and fellow delegates, Section 2, rather self-explanatory in itself, retains the same language that's presently in our constitution. It allows the legislature, if they see fit sometime in the future to increase revenues in the state for whatever need they find necessary to levy a five and three-quarter mills, or rather up to five and three-quarter mills; taxes just as exactly as had been in the past. Last year or so, in the special session we removed the five and three-quarter mills tax and replaced it, of course, --the revenues with the severance tax--in order that we might be able to remove, or thought we were removing, all the ramifications for asking for a hundred percent assessment or statewide equalization. Now, that we are proposing a statewide equalization with percentages of ten percent on residential properties and land, and fifteen percent on all other properties statewide, then we feel that in the future the state may just...may want to go back into the property tax business, and if they do, then certainly, they would be able to go up to the five and three-quarter mills. The legislature would be limited, of course, in this fashion, just like in any other taxes, to the two-thirds rule where both houses would have to vote on increasing this tax by two-thirds vote of the members of the legislature.

Mr. Rayburn Mr. Chairman, I'd like to ask Mr. Cheshard to explain Section 3; Mr. Slay to explain Section 4; Mr. Conroy, Section 5; Senator Nunez, Section 6; Mr. Champagne, Section 7, and Dr. Maubert, Section 8.

Mr. Cheshard Mr. Chairman and fellow delegates, Section 3 is the homestead exemption section and at this moment and, based on the contingency that the percentages and everything else falls into its proper perspective, will be offered at four thousand on a residence of the average homeowner, and five thousand...with a five in thousand homestead exemption for veterans and for people over sixty-five. This exemption, as you know--and this is nothing new--extends also to a one hundred and sixty acre farm; it does not extend only to a house. So, everything that is made...the issues made over the fact that a house worth forty thousand is exempt, at the same time there--and in the same breath--the farmers of the state should be told that the...exempt at the rate of four thousand, and if a veteran or if over sixty-five to the rate of five thousand. Of course, there are other sections in here, which others will explain to you, which will...which correlate with it and which would forego...visions for sliding scales of millage, readjustment of millages, coincidental with the implementation of homestead. When we get to this section in full,

in detail. But, that in sum is what Section 4 provides.

Mr. Slay Mr. Chairman and fellow delegates, come...believe it's almost self-explanatory. But, you have to go back to Section 2, which Mr. Alario just explained to you, about the five and three-quarter state mills that we got away from during the last session of the legislature by an amendment. Now, in case if the state ever needs to, it can go back to the five and three-quarter mills. What Section 4 is saying is that only if we go back to the five and three-quarter mills, or any part of this is ever levied, no bonds that are outstanding shall be invalidated. Or, if any part of the five and three-quarter mills is needed to retire bonds that are presently being held by the state...that the part...Article X, Section 2, will not impair the state's obligation to pay these bonds. As you read it, it's a very short paragraph and I believe it's self-explanatory, but as we get further along, and if anybody has questions, I'll be glad to try to answer them. Thank you, Mr. Chairman.

Mr. Conroy Section 5 deals with the adjustment of ad valorem tax millages. As drafted, it is designed to alleviate the problem which the taxing authorities might otherwise have or that people, individuals, might otherwise have as a result of the change in assessment ratios which would go into effect in Section 1. Section 1, as you recall, establishes what the ratios of assessments, the various kinds of property would be. The overall design of Section 5 is to say that in making the adjustment in millages we're not intending that a local governing unit would collect any more or any less in taxes. They're to collect the same overall, same amount of taxes as they would have under the old system, or whatever system was in effect prior to that time, in collecting the taxes. Now, there are several escape provisions or modifications of this. It's made clear in the last part of the section that this is not to preclude the taxing authority from collecting additional taxes, if even they exceed the millage as provided by law. If they place additional property on the tax rolls, of course, they are to get additional money from that. By reason of increased property values the governing authority is to collect additional money from that. There have been two problems pointed out to me in connection with this section as it presently exists. One of them I really don't think is a problem, but it was a matter of concern in local government circles as to whether this Subparagraph (C) was adequately worded to assure that a parish which had been, over the past few years, say, recognizing a five percent overall increase in values in the property would be able to collect five percent more taxes. I think that over this adjustment went into effect than the year before. I think that, as worded, it's intended to have that effect, and I think it would have that effect without having to specifically so recite. The other problem which has been brought to my attention is that this paragraph or section as presently written really does not seem to deal with the question of an increase in homestead exemption, and the resultant loss of homestead exemption. I think that the difficulty is that the law is deficient in that respect in that...if the homestead exemption is...the level that presently would exist in a taxing area, that that increase in homestead exemption would be at the expense of the governing authority. I don't think that under this provision, as presently worded, it would be able to shift the loss of revenues that would result from an increase in homestead exemptions to other taxing units, because...that result from the method of assessing property at a...result from the method of assessing property at a...

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in Section 2.

Mr. Nunez Mr. Chairman and fellow delegates, Section 7 deals with...or whatever section...Section 6 deals with the revenue sharing fund. In 19... after the court decision saying that the property tax relief fund was unconstitutional, we met in special session and reestablished a revenue sharing fund to be distributed on the basis of fifty percent...fifty percent based on homestead and fifty percent based on population. We thought we should put the revenue sharing back into the constitution, and we limit it to...in the constitution to eighty million dollars that the legislature may increase this amount if it so desired. It's essentially what's in the constitution today, and it just re-establishes revenue sharing—at the tune of eighty million dollars.

Mr. Champagne I have Section 7, which is the method of distribution of revenue sharing funds. This is a very short section, but other than the section on homestead exemptions and the percentages, it's probably one of the most important and vital sections in this proposal. This simply states that revenue sharing funds shall be distributed by the legislature to the parishes solely on the basis of population and number of homesteads in the parish. The ratio to be used in distributing...in making a distribution and the distribution of these funds by each parish shall be made in accordance with law. This simply sets up two known criteria on which you can have revenue sharing funds. It leaves the percentages of each to the legislature, where this battle should be fought, and not in the constitution. This enables that in the future we could not say that revenue sharing funds shall be distributed on the basis of the amount of the homestead exemption, which, of course, as you know, is the old property tax relief fund, and that is where the problem arose under the results of the suit, and the problems we're facing today. In some parishes got a greater portion of this than others by so doing. This is very important; it should read this way, and once again, there are those parishes who would like all on percentage...on population; others would like it all on number of homesteads. But, this provides that the homestead of a hundred thousand dollars is treated as the same as a homestead of two thousand dollars, and that is the way it should be, and this is very important. Keep your eye on this, and let's keep it that way. The committee was almost unanimous in adoption of this section. We had no discussion, and had only two dissenting votes, and I really think those two were there simply just not to give the people the idea that we had got together completely. Thank you.

Mr. Mauberret Mr. Chairman and fellow delegates, Section 8 deals with the tax assessor, his term of office, and his duties. Besides that, the appointment of an assessor in case of death during that time. Prior to 1952, the governor of this state could appoint a person to fulfill the unexpired term. If an assessor were elected for four years and served only two months, the governor had a right at that time to appoint the unexpired term of three years and ten months. However, in '52, Act 576 of 1952, a special provision was adopted and added to the constitution, which is designated as Section 69 of Article VII. This provision provides the governor could appoint only where the unexpired term was less than one year; otherwise, he was required to call an election within sixty days after the occurrence of the vacancy. During the interim between the appointment and the election of the successor, the chief deputy could act in place of the deceased assessor. Various opinions of the attorney general authorized the chief deputy to act as assessor until such time as the governor appointed, or the successor was elected. They were attorney generals' opinions of October 5, 1919, May 29, 1935, and November 4, 1940. In the city of New Orleans the board of assessors, composed of seven assessors, would meet and for-

mally appoint a chief deputy as acting assessor until such time as the governor would appoint someone to serve out the interim time, or until an election was held. Thank you.

Amendment

Mr. Poynter First amendment is offered by Delegates Mire, Rayburn, and many others. Now, I believe there were two or three of these passed out, so, this one has...it's a single amendment as opposed to a double amendment.

Amendment No. 1. On page 1, delete lines 23 and 24 in their entirety and insert in lieu thereof the following:

- "1. All land-----10%
2. Improvements for Residential Purposes--10%

Now, there's a very similar looking amendment in which item 2 reads: "Improvements Used for Residential Purposes." The amendment...that has been withdrawn or not introduced. The one that is introduced, item 2 reads: "Improvements for Residential Purposes-----10%."

Explanation

Mr. Mire Thank you, Mr. Chairman, fellow delegates. This amendment simply changes the percent on all land from five percent to ten percent and, in fact, leaves the percent on residential improvements at ten percent. I don't believe that it needs any further explanation. I would like to move that the amendment be adopted.

Questions

Mr. Hayes Mr. Mire, you had all land ten percent and improvements, for residential purpose, ten. That doesn't add up to twenty, does it?

Mr. Mire No, sir, it certainly doesn't, that is just ten percent on each of those classes.

Mr. Hayes I see another amendment here; it says "All land and improvement on residential property"-----ten, which looks like it would include the building and the land. This separates one and two, looks like you got the land one thing and then the improvement another--that's why I asked the question, it looked like they were separating them.

Mr. Mire Its just that we are not changing the two classes. We are leaving land under one class, and we are leaving residential improvements under one class, but both will carry a ten percent fair...

Mr. Hayes When you put the house on the land, it's still ten?

Mr. Mire Right.

Mr. Hayes All right.

Mr. Stagg Mr. Mire, this is just for clarification. In the committee's printed document, that item two is said to be "improvements on residential property." Then the one that you didn't go with says "improvements used for residential purposes." Then the third one said "improvements for residential purposes." Would you tell me wherein the distinction lies in the committee proposal, the one you didn't go with and now the amendment that is before the house? What is the difference?

Mr. Mire Yes, sir. Well, they thought that the committee proposal...the language wasn't just completely clear, the fact that it just said "improvements on residential property." What we really meant was all improvements used as residential property. But, when we decided to use the word "used," we thought then, that it could be that somebody would have--say, rental property--that is used for residential property but is, in fact, not rented and could come in and say "Well, I don't have anybody living in this house, now, it's not being

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used as residential property, so you can't assess it this year." So, to clarify that, we then thought the language would be better if it would be put as the amendment puts it now—"improvements for residential purposes"—which we felt would just clear the whole thing up.

Mr. Kean Mr. Mire, do I understand that under this amendment, if you had a building which was used for residential purposes on a piece of property, that then you would assign a value to the land and take ten percent of that, then you would assign a value—a fair market value—to the building on that property and take ten percent of that. But, you would not consider the building and the land together for purposes of trying to arrive at the assessment?

Mr. Mire Well, that's correct, you would not. You would have your value on the land and the value on the building.

Mr. Kean Then, you would anticipate, in determining fair market value of the building, that you would have to use some kind of a formula like the reproduction cost less depreciation to arrive at that particular value, because you wouldn't be able to use comparables which relate to both land and the building, would you not?

Mr. Mire Well, Mr. Kean, you are very familiar, I know, from just my personal experience with values of properties of which I feel I am fairly familiar with. You know, very well, that when you arrive at the fair market value of property, there are established norms that are considered and that we can't back away from. These are the ones that we purport to use in arriving at a fair market value of a piece of property, no matter what type of piece of property it is.

Mr. Kean But, you would do it...you would break it down into two parts, land and arrive at a value, and improvements and arrive at a value.

Mr. Mire That's correct, sir.

Mr. Kean So, that...would then...in determining the homestead exemption of four thousand dollars, would that be based upon ten percent of the value you gave the improvement, or ten percent of the value you gave the land, or ten percent of the total?

Mr. Mire So long as both values would not exceed the amount of homestead exemption allowed, you'd consider both...

Mr. Kean So that for purposes of the homestead exemption, you'd add the two together and take ten percent of that total...

Mr. Mire That's correct.

Mr. Kean If it did not exceed four thousand dollars, then that property would be exempt from those taxes to which the homestead exemption applies?

Mr. Mire Yes, sir. To further clarify your question, and I know that you'll agree with me, that except when the law provides for a different method allowed either in the constitution or by statutes, that the highest and best use of any property becomes really the criteria for the fair market value.

Mr. Kean Well, that's exactly my point, Mr. Mire. Normally, when you consider fair market value, you consider highest and best use and you use either comparable as to some other method to establish that value. But as I understand it here, you're going to break the evaluation process down into an evaluation of the land and a separate determination of the improvement. Then you're going to take the total of the two and take ten percent of that. And that came out to be less than four thousand dollars, you'd have a homestead exemption of four thousand dollars.

that property to the full extent. Is that correct?

Mr. Mire That's correct.

Mr. Kean Now, you know, Mr. Chairman, that we've got the "fair market value" language in the constitution of this state in terms of whether it's going to lower the tax base?

Mr. Mire I believe that there is no uniform concept of being done today, statewide, in every case except that we're not having a reappraisal on every five-year or on an annual basis—that this is done only at the time the assessment is established on the property, but I think this is the very practice that's being practiced statewide today.

Mr. Abraham Mr. Mire, one thing throughout this that still bugs me, and that is we state that "the percentage of fair market value shall be uniform statewide." Now, what provisions do we have to assure us that the establishing of the fair market value will be uniform statewide?

Mr. Mire Well, this is what we've got in the constitution. It spells out that it is going to be uniform statewide.

Mr. Abraham No, not the establishment of the fair market value. It says that "the percentage of assessment shall be uniform."

Mr. Mire Based on fair market value, all the way through, it will be uniform. It's the percentage of fair market value system.

Mr. Abraham Well, what mechanics do we have to assure that various parishes will establish the fair market value on a uniform basis?

Mr. Mire I thought I had explained it pretty well that we're going to ask that the legislature do in fact set up the vehicle for inspecting these parishes, either by your local governing authority, the Louisiana Tax Commission, or both, and in fact determining that they are using the fair market value and have absolute evidence that they're using the same method. I've never seen anything less than that. Of course, the court says that this is what we're to do.

Mr. Abraham Well, let me ask one other question. In establishing the market value is there any discretion that will be allowed or is...and I know that it's practiced now on the part of the assessor of determining fair market value according to use because you may have a particular piece of property which has a commercial building on it, which may be rented or you may have a parking lot next door to it, which actually does not draw any income and this type of thing?

Mr. Mire Mr. Abraham, I'll try to answer your question this way, as I answered Mr. Kean. Well, if we go with the land use concept, greenbelt concept, the legislature would establish the procedure to follow in administering this concept. Other than that, and I'm sure that you've seen it in the courts everyday, I have never seen any sort of forced sale or any sort of contest where fair market value is determined. In most cases, where they don't have to appoint, in most cases, they appoint a referee, and he goes into the field. They all vary a little bit. This is going to continue to exist, but there's some accepted procedure. I think that's the way it's going to be. I think that's the way it's going to be used. Thank you very much, Mr. Chairman.

Another Revision

Mr. Roemer Mr. Chairman, fellow legislators, support the amendment to change the homestead exemption report from five, ten, and fifteen percent to twenty, thirty, and forty percent. The homestead exemption is a very important part of the Louisiana tax system. The homestead exemption is a very important part of the Louisiana tax system.

details as to what happened in our original proposal and why we are trying to change. I've noticed the Committee Proposal No. 26 that you have in front of you signed by only twelve members of a twenty-three member committee, only twelve out of that twenty-three felt that we could sign that committee...that proposal, there is eleven of us that did not sign it. This happens to be one of the reasons, that is, rate of assessment, that we felt we could not sign the committee report. We felt that at five, ten, and fifteen percent, that the percentages were: (1) too low on a statewide basis, although they fit some parishes. They were too low for many of the parishes that we lived in—that's (1). (2) that the relationship between the percentages, that is, five percent being only one-third of fifteen percent. There was an undue burden being placed on part of the population and too light a burden placed on the other. It was the objectives of all the committee—and I want you to notice in this amendment—twenty-two of the twenty-three members of the committee signed and supported it. It was the feeling of the middle ground, that is, ground that would do justice to the relationship between ten and fifteen percent; that is, business and residential would be served. Middle ground in that it would...these percentages would more closely follow what our statewide averages are now, rather than the five, ten, and fifteen percent. To the best of our ability working with the tax assessors, working with PAR, working with the census bureau, we found that statewide properties average somewhere between fourteen and eighteen percent—give or take a percent here and there. But, that percentage is made up on one side of businesses being assessed at twenty to thirty percent on the one side, the sort of thing, and residential property being assessed anywhere from six to fifteen or up to twenty percent in some cases. The feeling, in other words, is that the ten, ten, and fifteen is middle ground. It doesn't do absolute service to anybody, but it doesn't do complete injustice to anybody, also. It is the feeling that with the ten, ten, and fifteen we can maintain an adequate tax base. Some of you might not agree with that. But, let me point out to you, as the assessors have pointed out to me many times, that the current assessment rates--statewide--are composed of a certain rate on new property and a different rate on the old property, in the terms of fair market value. You have to understand that some property has been on the tax rolls for ten, fifteen, and I guess, twenty or thirty years "Peg" and has never been reassessed; it's just been physically impossible for the assessor to get around to reassessing all of this property. Today the practice is that he reassesses the property when there is a transaction being made. So, yes, the current sales are fifteen, twenty, twenty-five percent. But, the old property is on the books at a very, very low value that may be more like two percent. So the point is, that under the court order and under this constitution, we are going to call for a reassessment of all property. So now all property will be brought up-to-date. So, the ten, ten, and fifteen does, I believe--based on what facts I can get--does represent a happy, middle ground that will not hurt any parishes--that's (1), and (2) will maintain the historical relationship between business and residences, that is, some small difference in this case--ten percent as compared to fifteen percent. For that reason, I'm supporting this; I think it's a good amendment. I think it serves our purpose well in this convention to support Mr. Mire and the other coauthors of this amendment.

Questions

Mr. Chatelain Buddy, I have some problems that...this is a friendly question. I'm trying to get some clarification. I have been studying for several days the committee report and...we were changing all land, let's talk about that first...

Mr. Roemer Yes.

Mr. Chatelain From five percent to ten percent. Now, when you...I would like to have a definition of "all land," as you have in this amendment I'm asked to vote upon. "All land" do you mean investment properties adjacent to a city? Do you mean "farm land"? Do you mean all...what it says "all land"?

Mr. Roemer Yes. All land will be valued at ten percent of its fair-market value under this proposal, with the exception of: horticultural, agricultural and timberland, which will be assessed at ten percent of its use value. But, all land will have this same percentage against it, whether it be fair market or use, it will be ten percent of that value--all land.

Mr. Chatelain Well, that's what I...I want one more clarification. Going back to your committee proposal the words used there were "improvements on residential property." Now, did that mean residential property...means land, building and land?

Mr. Roemer O.K. You will have a ten--good question--you will have a ten percent assessment against the value of the land. In addition, you will have a ten percent assessment against the value of the improvements on that land.

Mr. Chatelain All right. Let me ask you...

Mr. Roemer That does not add up to twenty percent, I hope you see that. There's two different elements to assets--there is the physical land and there is the improvements thereon. Each will be assessed at ten percent of its fair market value.

Mr. Chatelain In other words, if the land--for instance--on a given piece of property is worth ten thousand dollars and the home is worth twenty thousand. What is the total assessment, then?

Mr. Roemer All right. Three thousand dollars, ten percent of ten thousand on the land, which is one thousand dollars and ten percent of twenty thousand on the home, which is two thousand dollars.

Mr. Chatelain O.K. I have one other problem, Buddy. This problem lies in the area of all other properties. I'm confused, then, between your Amendment No. 2 which says "improvements used for residential purposes." Now, I got to assume that (1) takes care of my land and (2) will take care of my...whether it's a shack or a brick home or whatever.

Mr. Roemer I'm sure you don't live in a shack.

Mr. Chatelain But, I got one other problem. I'm speaking for thirty-three thousand people I represent, not for myself, I can take care of myself, very well.

Further Discussion

Mr. Chehardy Mr. Chairman, fellow delegates, this particular amendment is part of an overall compromise and it fits into an overall plan of assessment. I am supporting it. I am for it. If I would not be for it, I would be for lesser figures. Actually, these figures here when you reassess the property of this State will probably produce more revenue throughout the State of Louisiana than has ever before...has ever been seen before in our history. I think this, that it does affect a compromise in relationship to the new homestead level proposed that would establish uniform statewide level of assessment with an equality that has never been achieved before, and it will satisfy all of the major faction who have had differences. I really urge your favorable vote for this amendment.

Questions

Mr. Denney Mr. Chehardy, I'm confused as to the mechanics of appraising land for residential purposes (A), and then (B) appraising the improvements

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eighty mills. But, I believe, the millage...sliding millage scale will take care of your situation completely.

Mr. Stagg Evenly...even when in the case of the school board you have raised the homestead exemption and lowered the percentage of assessment. How are you going to take care of the Caddo Parish School Board when it's affected by an increase in the homestead exemption on the one hand, and a decrease to ten percent of the base on the other hand?

Mr. Chehardy Fine, well there are several...All right. That's a good question. Now, in the particular area where you talk about an increased homestead exemption, we had frozen in, again, into the constitution the same provision that we had with the original change in the...when we made the homestead exemption absolute last year. What we have provided for is at this stage, an eighty million dollar guaranteed base of revenue sharing, and that, of course, is calculated to go back to the communities. Actually, the homes above thirty-five thousand dollar valuation, which would be affected statewide, has an average of seven percent. In New Orleans, only sixteen percent of the homes even go over thirty-five thousand. In Shreveport, I don't have the percentage in front of me, but I'm certain it's not over ten percent or twelve percent. You might have that fact and figure with you. Now, that's one provision. But, the main thing, Mr. Stagg, is when there is a reassessment of property in Shreveport, the reassessment...the valuations that will then go upon the books should more than offset the loss because of percentages even before we go into any millage adjustment. But, millage adjustment is also calculated to take care of the homestead situation. Now, and you caught what I said on the bonding base for the school districts, they in the future can still support even though this is an absolute homestead, they can propose to the people a measure and it would be up to the people to decide. Do they want the measure had enough to give their rights of homestead exemption? Therefore, the bonding base will not be affected, will not be affected by those two measures. But, I believe the one thing that people have the tendency to overlook and that is the reason I sent the results of raising assessments throughout the country, there has always been an inflow of money, has always worked hardship. There has never been a problem of not enough money. Once an assessor is required to go back in on these homes that have never been touched in Shreveport for generations...in Caddo Parish on the farms that have never been reassessed. People face tremendous hardships if you don't have these built-in protective measures. That's the purpose of the folders that I sent out with articles, you know, discussing the effects in other areas.

Mrs. Zervigon Mr. Chehardy, did I understand you to say that the local governing authority can roll up its millages to take care of the amount that it lost because of an increased homestead exemption?

Mr. Chehardy Not only because of an increased homestead exemption. In other words, they take the total monies collected, and it does not take into regard whether it's homestead exemption or not homestead exemption.

Mrs. Zervigon The total loss...

Mr. Chehardy The total loss in a district, the total loss in a district. In other words, if they are previously taking in five million, and they take in four million, then there would have to be a millage adjustment upward. But, also, if they take in ten million instead of five, they'd have to reduce that millage so people would not undergo the tremendous hardship.

Mrs. Zervigon Well, that's the way I understood your proposal as it was originally explained to me.

Then, as I spoke to other members of your committee, they pointed out to me that in your millage adjustment section you specifically refer to Article XI, Section 1. Isn't that correct?

Mr. Chehardy That's correct.

Mrs. Zervigon Why do you specifically refer to that section, and you don't refer to the section on homestead exemption when you talk about running up your millage to make up for your losses?

Mr. Chehardy Well, in drafting...in drafting that section, that was never considered as limiting it...or never, in my opinion, as interfering with the--it was a choice of language--as having any interference with the homestead exemption or with the effectiveness of this sliding millage adjustment scale.

Mrs. Zervigon Well, can you tell me why you didn't phrase it so that it says that it makes up the losses incurred by the changes inflicted by this article, rather than by Article XI, Section 1?

Mr. Chehardy Well, I would say this to you, that I don't believe anything can be clearer. Well, article...the article that we refer to is the article that requires the reassessment of all property, reacquires the application of new percentages.

Mrs. Zervigon That's right.

Mr. Chehardy That, of course, is what will bring about the change--whether you take into contemplation the homestead or not. We had to make reference to it, you know, for that reason.

Mrs. Zervigon Doesn't the increased homestead going from two to four thousand, especially if levied against a smaller percentage, forgive a whole lot more in taxes than used to be forgiven in taxes? Isn't that correct? So that the...Section 3 has an effect, hasn't it?

Mr. Chehardy It has some effect, but it does not...but it's provided for, Mary.

Mrs. Zervigon It isn't mentioned, Mr. Chehardy. Is there a reason why?

Mr. Chehardy It doesn't have to be. If you read the provision on the millage adjustment, you will see that it does not restrict it at all. The millage adjustment, even though it refers to what brings about a change--in other words, you'll notice what the section says: that in the period of readjustment brought about by reappraisals, application of new percentages to achieve the statewide equality--there is no concern. That's what they're telling you; there's no concern for the various taxing districts because you can then slide, take the total dollar previously received, without regard to homestead exemptions or anything else. If you only receive...if you previously received a million dollars and, therefore, under the reassessment and the application of the new percentages you receive five hundred thousand dollars, then you can adjust your millage to bring it up. It's not...

Mrs. Zervigon Are you aware that it doesn't mention the homestead exemption...

Mr. Chehardy Absolutely, and it made no difference, Mary. It doesn't...that's not pertinent to the issue.

Further Discussion

Mr. Schmitt Although I'm one of the original coauthors in this amendment, I do not feel that we...the convention is taking the proper course with reference to the question of property taxation in the State of Louisiana. There are many things which must be decided prior to the time when we get into the actual percentages. These are, just some of them are: should the state be

tutions that were adopted by the people in the United States all have a land use concept. This, of course, is what the Louisiana Farm Bureau wants--the biggest reason why we have put this in our proposal. You would have to be a bona fide agriculture, horticulture, or a forestry man, or farm or organization, and you would be assessed based on this land use so long as this would be a bona fide operation. Should you be using it just to circumvent, say, properties that you mention that would be in a city that would be, in fact, its highest and best use would be development and that you'd be just purely farming it to hold it and there would be evidence to that case, then the land use wouldn't apply to you.

Mr. Segura I think this, Harry, answers my question and Mrs. Warren's. The only thing on that particular thing, I read it, and it says "the legislature may." I notice there is an amendment that says "the legislature shall," and you, as a member of this committee, feel that that will protect the farmer?

Mr. Mire Absolutely. I absolutely do, and if you notice this amendment that says "shall" is supported by, I think, something like twenty-two of the members of our committee.

Further Discussion

Mr. Kean Mr. Acting Chairman and fellow delegates, I rise to oppose the committee amendment, although I must say that it is an improvement over what we start with in considering this matter. I think that the convention must recognize this question of property taxation and the need to find some realistic solution to the problem as one of the most important issues to come before the convention. In reading some material about property taxation in Louisiana, I ran across an article that was written in the 1940s about a problem back in 1942 by Professor Jeff Fordham, who has been a noted authority in this field and whose critique of the property tax situation in Louisiana at that time, equally applicable to the situation now, I think, gives you a pretty good insight into the difficulty of the problem. It characterized the property tax situation in Louisiana in 1942 as a disgrace, and I do not think that there's been much change in that situation since that date. For that reason, I think we have to seriously, and give our most conscientious effort to coming out of this particular problem with a meaningful proposal that the assessors and the other officials responsible for property tax administration are going to make a sincere, bona fide, good faith effort to begin administering the property tax on a fair and equal basis. Now, I don't think there's any question about the fact that we must start with fair market value. I think we are now considering what percentage we apply to the fair market value, and I think that should be the basis for the discussions that have taken place on the floor to this point--the questions which were asked of Mr. Chehardy by Mr. Stagg--of the considerable differences between the parishes in dealing with property tax administration. I would have thought, initially, that these differences lent considerable weight to the possibility of tackling this problem on a local option basis. But, in looking at that approach, there are many problems, and I can only assume that those who worked on the problem over the weekend finally concluded that local option was not a satisfactory solution to the problem. We come back, then, to the question of a statewide percentage. We reach two problems, as I see it, in this area. One is to come up with a percentage which is not going to be so unrealistic as to deplete the tax base of any given taxing authority. The other is to have a reasonable homestead exemption which will not further deplete the tax base of the taxing authority. Now, I oppose classification of the type that is presented here today for several reasons. First of all, it is not classification because classification in the true legal

sense involves the treatment of all property similarly situated alike. This does not accomplish that. We have dissimilar types of property within each of the classifications that we have designed in the committee proposal. Under those circumstances--for example, if we say "all land at ten percent"--does that mean that the parking lot, which might have a land value just as much as the commercial building next door, goes on the rolls at ten percent and might produce just as much revenue to the owner, whereas the commercial building next door would go on at fifteen percent, even though it might be less productive with less utility than the parking lot had under those circumstances? We are simply placing, as I see it, in these three categories dissimilar property which cannot be justified. Under the circumstances, I can only conclude that we've got to find a percentage figure which would be applicable to all property alike. The Baton Rouge assessor's office, for example, tells me that they would much prefer to have a single percentage applicable to all property. It would make their problems much easier in trying to reach a conclusion with respect to the assessment factors. So, I say to you, first of all, the classification procedure which is established here is not classification. I think it runs the risk of due process, and for that reason I think we need to have some kind of a value which is applicable to all property. Secondly, the percentage, in my opinion, is too low. It creates great problems in parishes such as East Baton Rouge and in Caddo, for example. When you tie that into the homestead exemption at ten percent of true value, you create a situation where the taxing authority cannot compensate for the loss in that assessment. But, if it does have the authority to compensate for that loss, it's got to impose the tax burden on those who remain on the assessment rolls. Now...

[Motion to suspend the rules to allow for additional time adopted without objection.]

Mr. Kean Let's look at what this would do--not in East Baton Rouge Parish, or Jefferson, or in Caddo, or the more industrialized parishes of this state. Let's look at what this would do in the predominantly rural parishes of this state. If we say that the homestead has a value of a thousand dollars or less off of the assessment rolls by reason of the homestead exemption at ten percent of value, then who remains on the assessment rolls to pay the taxes? I'll tell you--it's going to be the fellow that owns the little Western Auto store; it's going to be the fellow that owns the corner grocery store; it's going to be the fellow who owns the little drug store or has the...that operates a restaurant in that local community. You are simply going to impose the tax burden that is taken away by the vast extension of the homestead exemption upon people who, in my humble opinion, cannot afford to take up that tax increase. Now, in East Baton Rouge Parish, I think by the time you get through with the homestead exemption and business and industry assessment, you're talking about eighty percent of the property taxes in this parish. Under the circumstances, if you had to load another twenty percent on those taxpayers, I guess it wouldn't make too much difference. But, can see, in the rural parishes of this state, where this extension of the homestead exemption and a ten percent value applicable to true value can end up with those rural parishes simply having no tax base unless you're going to put the load on the remaining people who are on that tax rolls, who are largely the small business people in the various districts of that state. In the case of general obligation bonds, where the taxing authority is required to levy so much millage as is required each year to pay the principal and interest on those bonds, that taxing authority has got to place the burden on those who remain on the rolls. For example, in East Feliciana Parish, if it had a school district bond or a parishwide general obligation for school purposes and we now wipe out the tax base by extending the homestead exemption to four

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thousand and applying a ten percent valuation to the value of the homestead, that simply means that the police jury or the school board in East Feliciana Parish has got to raise the millage in that parish to whatever it takes to pay the principal and interest of those bonds. That increased millage has got to be applied against those who remain on the tax rolls. Now, I say to you, these are serious problems which we must consider. When we look at the low percentage and the high homestead exemption proposed by the committee, I tell you, ladies and gentlemen of this convention, we're putting some tax problems on the people of this state, the like of which they have never seen. Now, I agree with Mr. Schmitt and the others who have spoken here today--this is a serious problem. If it would require, for example, going into a Committee of the Whole to consider these problems or if it would require further recess for the purpose of taking up other proposals and suggestions, I would prefer to see that than I would to see us approve something such as this with all of the ramifications that it has upon the taxpayers of this state. Lastly, the distinction which has been discussed here today between the method of evaluating land and the improvements which sit upon that land, to me, is going to raise an intolerable burden upon the assessors of this state, whether they know it or not, or appreciate that fact. But, at the present time, you go out and you see a house on a lot. Then you consider the value of that lot with the house on it at twenty-five thousand dollars, based upon comparable sales in the area. This procedure would require you to evaluate the land, and then, by some mechanics, deplete...some of the original value of...depreciated value or whatever method you use, you're going to come up with some value for those improvements. Now, that total might result at less than the true market value of the property if considered together, so that you could have a forty thousand dollar piece of property considered together which is, under this method, having a true value of twenty thousand dollars, and under those circumstances just try to see what that does to the tax base of that community, particularly when you apply the homestead exemption at four thousand dollars. I tell you, ladies and gentlemen, we are treading on dangerous water in connection with this proposal. I submit to you...

Questions

Mr. Mire Mr. Kean, did I understand you to say that your tax assessor said that he'd prefer a percent across the board for assessing?

Mr. Kean Mr. Frank Granger of the East Baton Rouge Parish Assessor's Office told Mayor Heine and myself just that yesterday afternoon.

Mr. Mire Let me ask you, then, does he, in fact, practice that today in East Baton Rouge Parish?

Mr. Kean No, he does not practice that today. But, his point was that if you're going to go with a difference in percentage of the type that we're talking about here, he would prefer to have a state percentage that he can apply to all property.

Mr. Mire Did you ask him why he didn't practice

Mr. Kean He told us that he felt it made his task easier in dealing with the problems of taxation.

port, because I don't think anybody would have stopped him if he had wanted to, in fact, put the

Mr. Mire I say I don't...don't you agree with me

Mr. Kean Well, I think all of the assessors could have been doing something different from what they've been doing up to this point, Peg. They haven't done it.

Further Discussion

Mr. Conroy Although I believe I am the only member of the committee who is not listed as a coauthor of this particular amendment, I do rise in support of this particular amendment. I'm not a coauthor because this was a part of, or was considered by some, to be a part of a compromise or adjustment of differences to which I did not subscribe in total. However, there is no doubt in my mind that this amendment is a significant improvement over the proposal of the committee as it came out of the committee. I think that it would be certainly wise for the convention to adopt this amendment, and then go on and consider whether further refinements or adjustments should be had. I subscribe to some of Mr. Kean's comments in that regard, particularly with regard to a uniform level as perhaps being the idea, but I think it may be impractical when we finally get to that point. I would prefer to see the figures a little higher. But, ultimately, what you're dealing with in this area is really only a relationship of the figures to one another in Section 1. This is a difficult concept to grasp, but really, when you talk about five, ten and fifteen, as the committee proposal originally came out, you're talking about, roughly, one, two and three--that you're assessing some property at three times the value of some other property. Fifteen percent is three times as much as five percent. Fifteen percent is only one and a half times as much as ten percent. Ten percent is twice as much as five percent. It's this relationship between these three figures or the figures that are used here in these categories that, at the present time, is, I believe, the most significant thing to keep in mind. Section 1, when all is said and done, I think that in proper perspective will really depend on what this convention feels is an appropriate relationship of the figures at which various categories of property should be assessed. Should they all be assessed at the same level? If so, it really doesn't matter whether you use the same level as ten percent, or twenty percent, or fifteen percent. If it's all the same figure, it's the same figure. It's the same...will result ultimately in the same effect on the tax base. The problem that I ran into in this area, and that with which I was concerned, was the relationship of Section 1 to Section 3, and the level of the homestead exemption. This is where my difference was primarily directed because I think that a homestead exemption of fifty thousand or sixty thousand or even forty thousand is far too high. It is in that area that you run into possible tax base erosions. It's in that area that you result in the greatest shift of tax burdens, in the greatest effect on the tax level. I think that a person somewhere...owning a home somewhere...between twenty and thirty thousand dollars...for the support of local government. I think that they are the prime users of the services of local government, and I think that, properly assessed, they should pay a part of that burden. Mr. Kean does not really deal with the problem of the tax base at the present time. In my view, the most important thing to keep in mind is the relationship of these various categories of property. Fifteen is far preferable to ten, and ten is far preferable to five.

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valued at fifteen percent of their appraisal, this will cause a landowner who owns an old building in a downtown area to tear the building down and use it for parking lot purposes because then he will be paying a lower tax rather than given an incentive to building up downtown areas?

Mr. Conroy Mr. Dennerly, I'm afraid that a lot of us are at a loss to explain exactly what the effect of these things will be. Nor could I possibly explain what the long-range effects of the proposal that Mayor Landrieu has embarked on in the city of New Orleans where exactly the reverse approach is used to land valuation where he uses a much higher value for the land than the percentage for the buildings there. This certainly makes a difference, but all I can say to you is that it seems to me far preferable here where we are faced with it right now...as whether you...to reduce that spread. The committee proposal came out at five percent for land and fifteen percent for other property. So my suggestion to you at this point is, my all means, support this amendment to reduce the problem that you point to. But I agree with you, the problem you suggest does exist.

Mr. Duval David, this is primarily an information question. I noticed the committee proposal had, in Section 2, under Classifications "improvements on residential property." The amendment as I understand it is "improvements for use for residential purposes."

Now, one, why did you change the word "property" to "purposes"? Do you know why the amendment changes the word "property" to "purposes"? To what effect does the word "use" have?

Mr. Conroy I think that all of these were what I would regard as technical amendments trying to clarify the intent. The intention here is to have all land exempt and to...I mean not exempt...to place all land at the ten percent and all property that is actually used for apartments or residences, or otherwise for residential purposes at the same ten percent level.

Further Discussion

Mr. Burton Mr. Chairman, fellow delegates, let me begin by saying that I am for the amendment only because it's better than the committee proposal, but not nearly enough.

I agree with Mr. Conroy that the root problem here is we have to consider the interrelationship of the homestead exemption and this assessment ratio. Now the committee proposal is for a five thousand dollar homestead exemption which means, briefly, that a fifty thousand dollar home would pay no tax. Now, in my parish of St. Landry--which I will confine most of my remarks to because they will give you some idea of the problems created in rural parishes where there are no big industries to soak to pay the property tax that everybody ought to pay. In my parish, four percent of the homes, according to the census statistics that you have, are worth more than thirty-five thousand. We would be left with one or two percent of the homes to pay property tax. At the present time, I am informed by my assessor, who I think does an outstanding job, and about whose performance I have many complaints what about the thirty-five percent, approximately, of the sixteen thousand homesteads in St. Landry Parish pay some property tax. So we are talking about, then, moving from a situation where perhaps thirty or thirty-five percent of the homesteads pay some property tax to one where one or two percent of those homesteads pay property tax. Now in my humble opinion, you have created a situation where one of three things then must happen. Either (a) the local governmental institutions, such as schools, the police jury, and so on, will not have an adequate tax base to run the government; or (b) you will create a situation where small farms and businesses, small home-owned businesses, will have to pay the total tax burden; or (c) the state will somehow or other have to come up with a new

tax to supplement to local government the income that has been lost.

Now, let me explain each one of these in turn. Take the first alternative: Either local government will not have the money it needs to operate upon. The answer to that, as I understand it, is two-fold. They say, "Well, you can roll forward the millage that you have." But let me put this to you. We have, at the present time in Ward 6 of St. Landry Parish, an approximate millage of twenty-five for parish and school purposes together. Now, the figures that I have been given in cooperation with my assessor and other people here more knowledgeable than I, show that we would have to increase our millage to get approximately the same amount of income to about a hundred and fifty or two hundred mills to make up for the homes that would be taken off. Now this means to me, then, that the agricultural land that's left, and the small businesses that are left, would have their present taxes quadrupled or maybe quintupled to meet that burden. Would they put up with that? I doubt it. I think it's a practical matter, the next time you came up for renewal of that millage, it would be resoundingly defeated. I would remind you that school taxes right now are being defeated when you are asking for a five mill renewal all over the state. One was defeated in St. Landry Parish in April. I cannot imagine what the reaction would be to those paying the tax...left to pay the tax if you ask them to renew a fifty mill school maintenance tax.

Now the second alternative, then, would be, if agriculture and small business would not be soaked to make up the difference, that the state government some way or other would have to come up with this money in order to prevent the collapse of the school system or doing without parish roads, etc. How would the state produce this money? I have not noted a great surplus in the state budget in recent years. In fact, there was not enough to pay a legislative pay increase for school teachers last term. Therefore, I can only conclude that this would require the state to need to raise money in some way. Is it just? It is sensible to tax the people of this state, all the people statewide, to provide a homestead exemption for people living in a forty or fifty thousand dollar home who ought to, I submit, pay something to support their parish services. I submit to you this does not make sense.

Now the second answer, though, we are given by the proponents of this plan is, where all the property is going to be reappraised. Ladies and gentlemen, I don't believe in fairy tales. I like to read them to my children, but I don't believe in them...I don't believe in asking any political official to do something that is politically unfeasible. Now are we going to sit here and be naive enough to believe that the assessors in all sixty-four parishes of this state will, upon the passage of this constitution, venture out across the length and breadth of their parishes and reassess every single piece of property, in eighty percent of the cases maybe doubling or quadrupling the value of that property on the assessment rolls? I submit to you, we'll have sixty-four new assessors at the next election, if that happens. I don't believe in asking a man to do something that is politically unfeasible. Practically it's not feasible. My assessor tells me it would take three hundred and fifty thousand dollars just to provide the aerial maps necessary to reassess St. Landry Parish. Where is that money going to come from? He's got a staff with three clerks and one assistant. It might take him ten or fifteen people to do this reassessment. It might take him three or four years to do it. While he is busy doing it, you are going to have to roll forward these millages, and you are going to have to roll them forward on the agricultural and small business people that are left. They will have to pay the tax. Or, the alternative is, you will not have a system of public education, you'll not have hospital districts, you'll not have drainage districts, you'll not have parish roads, and the other things that are presently financed by means of the property tax on the local government.

I cannot buy this. I don't believe in fairy

Finally, I would point out, as I did in the question to Mr. Mire, that in our parish fully twenty percent of the assessed valuation of our parish right now is in pipelines and public utilities. They are assessed at somewhere between, depending on who you ask, eighteen to twenty-five percent. Under the committee proposal, this would be mandatorily reduced to fifteen percent which would, again, be a tremendous reduction and there's no reappraising pipelines. How are you going to re-appraise a pipeline that's in the ground? I'd like for someone to explain that to me. I would be very interested to hear it.

You say, "Well, it's going to be assessed at its present fair market value." The tax commission, as I understand it, has supposed to have been assessing them at fair market value all this time. Just like the assessors have been supposed to be assessing property at a hundred percent of fair market value, just like the assessors will be supposed to be reassessing all the property in the parish every five years under this committee proposal. I don't believe it. I think it's unfeasible. I think it's unwarranted.

I think any question... I can... which may

Point of Information

Mr. Burns Is there any chance at this time to discuss the section on homestead exemption together with this one? The reason I say that, all during the noon hour, person after person that I have talked to were uncertain or confused about voting on this amendment because they didn't know how the homestead tax exemption was going to turn out.

... whatever you want to do. I don't see... we are going to be able to discuss two sections at once. So... of course... we'll do whatever this body decides to do. But I don't see how we are going to be able to consider or to take up two sections at the same time.

Further Discussion

Mr. Champagne Mr. Chairman, ladies and gentlemen, I would urge you to support this amendment and I suggest to you that it is better than the original proposal by the committee. In the event that you do not agree with the percentages in the final result, there is no commitment on your part, or anybody's, to stay with the proposal. But if you do not propose, or if you do not support this amendment, then you do stand the chance of ending up with a five percent, ten percent, and fifteen percent percentages.

I would urge you, therefore, whether you agree or not, and there are some of you who feel that the ten, ten, and fifteen is not high enough, it's not equitable. You will have your chance later. But I suggest that if you want attention on the five, ten and fifteen, that this certainly gives you an improvement... I would, therefore, urge you very strongly to support this amendment as a step in the right direction. Whether you agree with it or not, it's certainly better than the five, ten, and fifteen we have in the original proposal.

I want to call to your attention some of the material that has been reproduced that I dug from the files and had some of the research staff do. We got together. I want to suggest to you that it's not being critical of any one parish or any one individual or group of individuals. It's simply presented in the hopes that it makes it clearer in your mind. I would also say that if any of you want to contact me personally, I will be glad to

we have done a lot of research. We have read the research. I would suggest that you try to digest this material in search of the truth and the right solution to this problem. I also urge you to attack it on a statewide basis, that I feel that this is an opportunity we have to do something about this property tax situation. It may never come again in our lifetime.

I urge you, therefore, to work strong and hard for a solution to this problem rather than putting it on a parish-to-parish basis, and in so doing, not attack the problem at its source.

Thank you. Any questions, I'd try to answer.

Further Discussion

Mr. Lowe Mr. Chairman, ladies and gentlemen of the convention, I rise to support the amendment. I, like the speakers that appeared before me, feel that we may not have the best in this amendment, but certainly we are getting closer to what the two factors in the committee had hoped that they could compromise on.

I think we have two clear-cut issues before us in dealing with property taxes. The first one is a tax base. If we know the tax base, I think that any of us in this convention could sit down and work out what's best for our particular locality. If not, what's best for the state. I'm not sure that it's possible to come up with one set of percentages that's going to be utopia for every parish, or every district, in this State of Louisiana. So that's the first point. We have a tax base to worry about. I've gone around and talked to as many assessors as I could, I've talked to individuals and organizations that had surveys performed that came up with what the assessment ratios were. There's as much difference between the assessors and those other groups as there is day and night. They just don't agree on what the tax base is. So, I don't know where we go to try to find out what we can use as a tax base. Let's agree right now that it's impossible to come up with any figure that we can use as a concrete tax base. People just don't agree. So that puts us in a dilemma. How can we figure percentages... or the right percentage... if we don't know the tax base.

Now secondly, I think the other point is, is that we all have to agree that we have well established in our system of property taxes, classes; classes of land, residential property, and business property. Now unless we are going to get involved in tax reform, we have to pretty much respect what's deeply rooted in our tax system. We can't change it overnight. If we change it overnight, we by necessity, have to have a shifting of the tax burden from the residential to the industry, or from industry to residential. There's nothing that we can do to change that. So if we look at these two things, you have to agree that we have a dilemma.

Now, we get back to the tax base. If you look at one of the surveys that have been done, you will find out that in the sixties, Caddo had an assessment ratio of 31.5 and Lafayette had an assessment of 7.1. So if we are dealing with that much difference in the assessment ratio from one locality to the other, we have to have differences of opinion among the delegates to this convention. How can one percentage serve the people in Lafayette or the assessor in Lafayette, equally as well as the assessor in Caddo? It's just impossible. So, the delegates that come to this microphone and tell you their problems, you can believe them. They have problems. I don't believe that we are going to solve all of the problems. Personally, I started with a disagreement with the legislature on the land and improvements, and fifteen percent on all other property. But I would like to see a five percent, ten percent, and fifteen percent on all other property. Personally, I would tell you that I would prefer ten percent on land, and fifteen percent on improvements, and fifteen percent on all other property. I would like to see a five percent, ten percent, and fifteen percent on all other property because we are not in that particular area where that will be a state policy.

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way that anyone is going to come to this microphone and tell you that it's going to serve all of us well, because it's not going to do that. It's impossible. So I ask that you support the amendment that we have before us and come up, support the classes because we have the classes well established in our system. If we don't support them, we are going to have a tremendous shifting of the tax burden from one segment of the taxpaying community to another segment of the taxpaying community.

I ask that you support the amendment that we have before us.

Further Discussion

Mr. Casey Mr. Chairman and delegates, connection with whether this amendment is or is not adopted, I feel somewhat like a seaman who may have fallen overboard off of a ship which may be carrying a lot of different types of catch from Africa or some place...animals. They yell down to the seaman who is going down for about the third time and they say, "Well, you don't have a life preserver available, but take your choice. We have, you can either latch on to an alligator or a shark. Just let me know which one you want." I sort of feel like I'm in that type of position because, to me as one delegate from a metropolitan area which is seriously affected by percentages, and that's what we're talking about, five percent is certainly pretty bad. It's horrible. Ten percent just happens to be a little bit better and it doesn't leave us in as bad a position as we would be with five percent.

Our problems are this in the city of New Orleans. I have been informed that property that is being put on our tax rolls when a sale occurs at approximately between twenty and twenty-five percent. I know that for a fact for I have bought and sold property in the city of New Orleans and represent many people who buy and sell property in the city of New Orleans. I know for a fact that that criteria is used. I know that people who own property in the downtown business area of the city of New Orleans, the land was revalued and placed on the assessment rolls at thirty-three and a third percent of value. I'll tell you how that value was arrived at. The board of reviewers in the city of New Orleans, the real estate appraisers who went through the downtown area and fixed realistic valuations and not just realistic. I thought they were personally pretty high...like fifty dollars a square foot for downtown property in the city of New Orleans. That's the basis that's being used in the central business district of the city of New Orleans. The assessment ratio evaluation is thirty-three and one-third percent of those high figures. Now, granted, I know Buddy Roemer has already pointed this out to me, he'll wager that there's probably property in the city of New Orleans that hasn't been revalued or touched in twenty years. He's right. He's absolutely correct. We don't know how much property falls into that category. But the point is we are estimating that overall, the overall valuation is pretty close to twenty percent for all property. So what happens when you adopt a ten percent or a five percent ratio evaluation and you adopt a four thousand dollar homestead exemption. Today, in the city of New Orleans, people who own homes are paying real estate taxes. There is at least one of them that has asked me as a legislator or as a delegate to this constitutional convention, for relief. They want the services that we provide in the city of New Orleans and they are glad to pay. Nobody has complained about being overtaxed. But you know what's going to happen? The shift is going to occur from the homeowner who is paying taxes today, and he is going to get a free ride. That shift is going to go to other property which is occupied by tenants. The increase in taxes is going to be transferred to those tenants, which is a large majority of the poor people in the city of New Orleans.

Also, it's going to be shifted to the shop

owners...the people who own the shoe repair shops, the laundries, the corner grocery stores, and businesses of that type. It's probably going to shift to certain portions of industry. Although, I understand, and I don't know that this is correct, that industry is pretty well paying their share of the tax burden now and they probably complain less than anybody about the taxes that they are paying.

So all I want to do here at this point is advise caution in dealing with these percentages. I want...I personally, as one delegate, do not want a feeling of complacency or satisfaction to come over this convention if, and when, and I would assume this ten percent figure will be adopted because more people are satisfied with ten percent than five percent, but have no feeling at all that many people in metropolitan areas, or in rural areas are satisfied with a ten percent figure because it doesn't cure our problem at all. It maybe helps a little bit. Just remember, the idea of this...the shark and the alligator...one's almost as bad for us as the other. Ten percent happens to be a little bit better.

I yield to any questions.

Questions

Mr. Roemer Mr. Casey, I just had two or three brief questions. In your talk you said that the property involved in recent transactions were, to the best of your knowledge, put on the rolls at some twenty to twenty-five percent of the fair market value. Is that correct?

Mr. Casey I'm not sure if I used the words "recent transactions" Buddy. I do know from being intimately involved and passing acts of sales and handling real estate transactions, and I've done more of this over the last few years than I did in the first twelve years of law practice, I know as of that time, say the last four or five years, that that has been pretty much the criteria used.

Mr. Roemer But you also know there are seven tax assessing districts in Orleans and they don't all follow the same percentage. You know that, don't you?...?

Mr. Casey It is my...

Mr. Roemer ...you didn't say that to this convention, but it's true.

Mr. Casey You are absolutely correct that there are seven assessors. I don't know which one of them does not follow that procedure. I'm not going to say that all of them do. I don't know which one does not, though.

Mr. Roemer Well, we know, as a matter of fact, they all don't from testimony in our committee. I can tell you that. Now do you further grant the fact that we do have an unknown amount in our opinion, in the committee, fairly large; your opinion, perhaps, fairly small, of older property that hasn't been reassessed for numbers of years.

Mr. Casey I stated that quite frankly. You were the one that had mentioned that problem...

Mr. Roemer Well, don't you think...

Mr. Casey ...that's the whole problem. We don't know of the full impact or effects...

[Mr. Casey responded to the question allow for additional time adopted without objection.]

Mr. Roemer I'll be through in just a second, Tom. Now, to pursue this further, you did mention in your talk that there was...although you didn't call it by name...the central business district that has a thirty-three and a third percent assessment on

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problem, it's not your parish versus mine, because actually...

Mr. Casey No, I realize that, I don't mean...

Mr. Chehardy ...actually, New Orleans, and one or two other parishes, versus the majority of the state. You know, if we look at it in that arena... in that perspective. We... the... I'd say seventy percent of the state has the problem common to Jefferson, St. Bernard and other areas. New Orleans has a problem common to Caddo and Baton Rouge, maybe...

Mr. Casey I wish we could solve everybody's.

Mr. Chehardy Right. But in answer to what you said, I feel the people of this state would feel much safer worrying about their taxes having to go up if they pay too little, rather than turn it over to the city of New Orleans or any other area, exorbitant amounts of money and then hope to God they give it back. Because, I think you'd agree that if we sold all our property and gave it to the city, you'd figure a way to...they'd figure a way to spend it.

Mr. Casey Are you asking a question or making a Statement?

Mr. Chehardy Yes, I'm asking you. If we gave them all the money from all the homes in Louisiana, would you not agree New Orleans could spend that in the next few years?

Mr. Casey Far be it from me that New Orleans...to say that New Orleans could not use that much to its benefit as Jefferson Parish could. I think Jefferson Parish certainly wants to progress just like New Orleans and build its parks and cultural centers and things like that.

Mr. Chehardy Are you aware that Jefferson has again had, I believe, the biggest gains in the state...twenty-four million in relation to property despite the fact of a low assessment ratio?

Mr. Casey I think that's a compliment to whoever increased the assessments and put that property on the rolls...

Mr. Chehardy Well, we lowered the assessment ratio.

Further Discussion

Mr. Chatelain Mr. Chairman and fellow delegates, I too stand up somewhat like my predecessor here at the podium. I think this is a three-legged stool we are talking about. It's a three-legged problem. I see Sections 1, 3, 4, and 5 all working together. At this point in time, the percentage doesn't mean a great deal to me. But if I have to go by a guide, I have to follow the committee proposal which states down in 3 that the homestead exemption shall be five and six thousand dollars. On that basis then, we are sticking about a fifty or sixty thousand dollar homestead exemption. I think we ought to take a long, hard look at this. I know; I agree with Mr. Roemer that we have to take them one at a time. But I think we ought to get some expression from the committee, or for someone to give us some idea as to what we are going to do in Section 3. Now five and six thousand dollar homestead exemptions are going to be a great deal different than if we'd go back to what I think would be reasonable, maybe a three thousand dollar homestead exemption, or twenty-five hundred dollar homestead exemption. This would make a great deal of difference. I can't say at this point, and many of you can't, as to whether you are for the amendment before us now or not because it does bear, if you will read down in Sections 4 and 5 the problem exists there. Number 4 states that "no impairment of existing taxes or obligations." This is a significant point. It

does mean a great deal to the various parishes and political subdivisions throughout this state.

All right. Section 5 is a rollback or the roll forward provision in the committee report. I think that, too, bears a great deal on the judgment we make on the amendment before us. I would only leave with you the thought that we'd better be very careful, possibly, if we do accept this ten percent, which is certainly better than five percent, and it looks like the tenor of the convention at this time is that they could possibly buy this ten percent provision, or amendment, if it does somewhat correlate with a two, twenty-five hundred or three thousand dollar homestead exemption. That's the only problem that I have with this amendment. I think many of you have this same problem. So I would say that let's be cautious. If we do accept this, let's leave it open where we can come back to it and reconsider at a later time, and certainly try to make judgment, will be good for the people of the State of Louisiana.

Questions

Mr. Roemer E.J., you know, I share your concern that we not do anything in haste, and that we try to sort through the confusion on this issue, but I ask you and any other speaker, in the form of this question: don't you think that we add confusion here if we don't make the distinction for the benefit of the delegates, that we have to do these things one at a time? Yes, they relate to each other, but we've got to take them in their natural order, don't you think? Would you agree with me that the natural order of things is to peg a fair assessment rate? Then, let's talk about homestead exemption. Then, we've got different arguments to use. Then, we've got different logics that we need to bear on the point. But, let's start with the rate first. Don't you agree with that?

Mr. Chatelain I'll trade a question to you. I'll answer your question if you'll answer one of mine. "Yes" to your question, and my question to you is this: don't you think that five thousand dollars is too high for homestead exemption?

Mr. Roemer Yes, sir, I ain't a ten percent rate.

Mr. Chatelain Well, that's exactly what I'm trying to get, an expression from the committee to tell us about where we're headed.

[Proceedings continued on another page.]

Closing

Mr. Mire Mr. Chairman, fellow delegates, I'm not going to be long, but I thought I had to clear up one point, and this is on those who spoke in favor of a level assessment percentages for all properties. I think the fact that no parish, to my knowledge, no parish, to my knowledge today, uses a level percent of assessment. That includes of course, East Baton Rouge Parish, Caddo Parish, Orleans Parish, and all other parishes. To my knowledge, they're using a variable so this is the reason why we have a variable, in an attempt to not have a shift of the tax burden from someone who presently is not, in fact, paying those taxes. Other than that, somebody mentioned something about oil and gas properties. Let me tell you that all properties, whether they be oil and gas, pipelines, manufacturing plants, or what have you, can be appraised today. You can...somebody insists that they can't hear...I think we have one significant point that you should consider is that all taxable properties are...can be appraised, and a fair market value can be arrived at on all taxable property. I mean particularly I've heard the lawyers get up here and say, "How are you going to determine a fair market value on some specific properties?" Most of them have been in court with successions or with liquidations, or with all sorts of cases that fair market value had to be arrived at. In all cases it is arrived at, and this can be done.

Mr. Poynter The next amendment sent up by Delegates McDaniel, Rayburn, Edwards, Roemer and others: Amendment No. 1. On page 2, line 4, after the word "legislature" and before the word "provide" delete the word "may" and insert in lieu thereof the word "shall".

Explanation

Mr. McDaniel Mr. Chairman, fellow delegates, this is a very simple amendment, in that it changes one word from directing that the legislature may provide that agricultural, horticultural and timberland will be assessed at its use value rather than fair market value. I'd like to briefly tell you what we're talking about here when we talk about use value in lieu of fair market value. In this commodity of land we have a unique commodity in that it has many alternative uses. Some of it is industrial sites, commercial sites, residential sites, and the agricultural base of this state. Each of these has a different value. Let's look at this in terms of the public and what's involved. It's in the interest of the urban areas that some of these greenbelts and open spaces be preserved for many reasons, just as it...very essential to the agricultural base of this state that the law be in line with its productive capacity in agriculture. Use value is in use in better than thirty states as a basis of assessing bona fide agricultural land. With constitutional provision for this basis then the legislature is able to enact the necessary statutes to make it effective and apply it only to bona fide agricultural land. Let's look for a minute at some of the things that this idea could do. By giving bona fide agricultural land this tax treatment and these transitional areas where competition for land is acute, and the person has had historical value...historical basis, and agricultural production. It's in the interest of the urban people in this day in which we're worried about environment and ecology. Maintaining open spaces in the basic biological processes of agriculture, we can take some of your foul city air and give back, in the creation of plants, the growing of plants, life-giving oxygen that's essential in the process. Certainly, there is some esthetic values there is some recreational value, and values of this nature in preserving some open spaces. This is tied in with the popularly known area that's known as the greenbelt concept. We need to protect the agricultural base as a source of food and clothing in this state. The farmers are willing to pay their fair share of taxes, and this is not necessarily a shift of taxes. In the State of Washington the study was made upon the effect of use value in relation to other taxpayers, and in the highest shift, you're only talking about approximately a four dollar per year shift in an area like that. In an area such as mine, that's predominately rural, use value and market value are almost one and the same. It's just in those areas of transition, largely around cities, or along rivers or streams, that if the land were assessed at its value for industrial or commercial sites, a farmer would no longer be able to maintain it in agriculture. So, what we are asking here is simply for authority to go to the legislature and implement the plan, it's that bona fide agriculture and some of the open land that we have today can be preserved. I might mention that our committee approved this. I understand the Committee on Natural Resources has approved it, and of the various plans that I have seen, between all of the different groups here, searching for an alternative way to assess the land, it's the bona fide agricultural, horticultural and timberland as a

would urge the approval of this amendment.

Questions

state legislature has been mandated to reapportion itself every ten years with the word "shall" in the constitution?

Mr. McDaniel Yes, sir.

Mr. Anzalone Would you agree that an amendment that would remove the words "the legislature shall provide that" would do some justice to this section, rather than leave it in that the legislature shall, so that it would read "agricultural, horticultural, and timberlands will be assessed for the purpose of taxation at a percentage of use value rather than fair market value?"

Mr. McDaniel Well, there was quite a bit of argument as to whether it should be...let me back up. I'm not sure, you say "will"? "will" and

Mr. Anzalone Yes, sir. In other words, instead of telling the legislature that they've got to do it, we're telling the people of the State of Louisiana that that's the way it's going to be, and not wait on the legislature to make up its mind.

Mr. McDaniel Well, I would say this, that in connection with administration of this, there is going to have to be many statutes developed to implement a program of this nature, so I think the legislature is going to have to act to implement a program of this nature...

Mr. Anzalone Mr. Jim, are you aware that the removal of these words would not interfere with the legislative process of assisting in the enforcement

Mr. McDaniel No, I don't really see much difference in the meaning of the "will" or the "shall".

Mr. Anzalone Well, the thing is, that you're not going to be able to do it until the legislature tells you you're going to be able to do it. If you put it in here that agriculture and timberlands will be assessed, then that's the way they are going to start it.

Mr. McDaniel You may be right.

Mr. Anzalone I have a question, do I have residential property, or do I have a horticultural property?

Mr. McDaniel You still have residential property. These are the type ideas that are covered in statutes in the legislature. Most of these states, when they get to the enacting legislation to implement programs of this nature, they spell out what is bona fide agricultural property and certain criteria and to use it. Usually associated with this is such things as rollback of millages, when it does move into higher uses and things of this nature, but all this should be handled in the legislature to where abuses could be corrected as they are surfaced.

Mr. Anzalone Now, the amendment that would make it so that the legislature would be required to reapportion itself every ten years, would that be a good thing for agricultural purposes worth many, many, many more than the assessed value that they're sold at the convenience of the owner over a several year period of time. Just that kind of law would be a good thing for agricultural purposes to pay no more taxes than agricultural taxes?

Mr. McDaniel If there are no questions, and there are no more amendments, I would like to move on to the next item. I think we should be leaving this session if we have time. This is a representative of the committee.

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basis, or just because he can put a fence around it and two horses on it, I think these are the kind of inequities that your statute would deal with, that would spell this out in order to restrict it to the bona fide agricultural user.

Mr. Pugh In other words, you contemplate then, that the legislature will say that history is created by farming for so many years on the tract. Is that what you're saying?

Mr. McDaniel These are the type things that other states have done, and I think you could say, such as across the river here because one farmer sold out for two thousand dollars an acre for industrial site; the next man wanted to continue growing sugar cane; they'd been growing it there for ten years or twenty, or such period of time. Obviously, he couldn't stand a tax rate at that basis, and if you taxed it at its highest value, you could essentially drive it from agriculture into undeveloped or undeveloped urban squall, or something of this nature. It's just that land that's in a transition area, between rural and urban, that this would be protection for the man that has a history in agriculture until it does move into commerce.

I urge support of this amendment.

[*Courtesy added to the amendment.*]

Further Discussion

Mr. Anzalone Ladies and gentlemen of the convention, as so many people have done today, I'm up here—don't know whether I'm for or against. I do know one thing that I am for use value in the assessment of agricultural, horticultural, and timberlands across the state. I do know the words "the legislature shall" sounds mighty good, but the only problem with this is, when shall they do it? You tie in your case of reapportionment, they shall do it every ten years, and then we spend about seven in the federal court system trying to get it done. I'm going to offer an amendment to this section that merely says that "agricultural, horticultural, and timberlands, shall be assessed for the purpose of taxation at a percentage of use value, rather than fair market value." What this does is immediately upon the adoption of this constitution will place this concept into effect, and you will not have the problem of waiting until the legislature decides to "shall". I ask that you vote down this amendment. My amendment is going to do the same thing that the committee want to do. The only thing that differs is the fact that it's going to do it immediately, and not wait upon the legislature to decide.

Questions

Mr. Abraham Joe, if you simply use the language that you are proposing, would not this leave it open then for various assessors and various parishes to use different percentages in establishing this use value?

Mr. Anzalone That would be set by the legislature.

Mr. Abraham If I understand you correctly, your amendment will not necessarily mandate the legislature to set a uniform percentage statewide, whereas the McDaniel amendment, as we have proposed now, will say the legislature will do this on a uniform basis statewide.

Mr. Anzalone Mr. Abraham, it's inherent in the language of the amendment itself that the legislature's going to have the authority to do it.

Mr. Abraham What is to prevent, then...you made the statement awhile ago that we did not say "the legislature shall" we should not say that because we don't know when they might get around to doing it. Now, if we do not say anything at all, and they are not mandated to do so, will they ever get

around to doing it, if they are not mandated.

Mr. Anzalone I don't understand your question.

Mr. Abraham You're saying...

Mr. Anzalone My statement is simply this, is that we are not going to have use value in this state, under this particular amendment, under this particular provision, until such time as the legislature gives it to us. My amendment is going to give us use value on land immediately.

Mr. Abraham The thing that I am concerned about, though, that the use value will be a different criteria...a different criteria will be used in each parish of the state, and no two assessors will be applying the same use value. How do we get uniformity throughout the state in the application of use value?

Mr. Anzalone You get your uniformity, Mr. Abraham, from the provision that you just adopted, which gives you ten percent, until the legislature decides to change it.

Mr. Winchester Are you under the impression that if we use use value, the ten percent applies to the use value?

Mr. Anzalone It would until the legislature changes it, Mr. Winchester.

Mr. Winchester Because ten percent on the use value would be mighty low, in my estimation.

Mr. Thompson May I ask a question? I believe you misstated [misstated] what you meant because, by your amendment, you're saying vote this one down. I don't believe this is really what you want. Why not vote this one, and then come back with your amendment and say "agricultural and horticultural and timberlands will be assessed." Just leave the other out, but you need to vote for this other one first because, if you're trying to get this one killed, it probably won't come up. I disagree with your way of doing it. You can pass this that's there now; come back with one that will strike out "the legislature may provide that," and then you accomplish the same thing. So what, I'm saying, why not vote for this one, then come back with an amendment to strike the first five words out, and you'll have the same thing?

Mr. Anzalone Either way, Mr. Thompson.

[*Previous question ordered. Record vote ordered. Amendment adopted: 116-1. Motion to reconsider tabled.*]

Amendment

Mr. Poynter Amendment sent up by Delegate Kean as follows:

Amendment No. 1. On page 1, delete lines 11 through 32, both inclusive, in their entirety and on page 2 delete lines 1 through 7, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. Assessment of Property; Adjustment of Millages
Section 1. (A)

[*Motion to waive reading of the amendment adopted without objection. Amendment withdrawn and resubmitted with corrections.*]

Explanation

Mr. Kean Mr. Chairman, fellow delegates, I'm not going to belabor the point which we've discussed at some length previously with regard to the question of classification because, as I attempted to point out in my last discussion of the amendment previously adopted, that I seriously doubted that

which is presented by the committee proposal, with several significant differences, and I'd like to outline them for your purposes in considering the amendment. First of all, I have deleted the classification approach to property taxation, and provided simply that all property would be assessed uniformly throughout the state at fifteen percent of its fair market value. It seems to me that in light of some of the discussions we've had today with respect to value and what is being done in one parish as distinguished from another, that the fifteen percent of market value would come about as close to being what we're doing at the present time, as any figure we could select. I don't think it would create any great differences in the various parishes, and would probably average out at about what is the present situation. Secondly, it seems to me, that when we talk about fair market value there should be some kind of criteria by which market value would be established, and the second difference insofar as Section 1 (A) is concerned is to provide that the legislature would be required to establish uniform criteria for determining market value which would be used by the assessors in establishing market value against which the percentage ratio would apply. I have carried forward the point made by Mr. McDaniel that, in the case of property in bona fide use for agricultural, horticultural, and timber purposes, that use value would be used in determining fair market value, and I have further provided that the same criteria would be used insofar as the incorporated municipalities are concerned. Secondly, we have put into Paragraph (B) the rollback or rollup provisions which would be necessary, depending upon the circumstance in any particular given parish, for the results of the fifteen percent fair market value would result in a lowering of the assessment base, or an increase in the assessment base, and would permit, under these circumstances, adjustments to be made in order to compensate for the variation in the assessment base. Lastly, we have provided, as did the committee proposal, that the assessors would list the fair market value, and that the Public Service Commission would continue to list the fair market value of public service property with a reappraisal of the property every five years as provided by law. Now, it seems to me, that this represents a reasonable compromise of the several proposals that had urged before it. It fixes the percentage statewide. It establishes the basis by which we would arrive at market value and put use value insofar as certain categories are concerned, it includes the rollback or rollup provision which might result from adjustments, and would provide a five year, reappraisal of property in order to take care of ups and downs in the economic system. I suggest to you that this is a fair and reasonable approach to the problem, and that it would enable us to move forward without further discussion of this matter. I might say that I have a subsequent amendment which would propose a twenty-five hundred dollar homestead exemption, and which would provide a five thousand dollar homestead exemption for veterans for five years, and five thousand for citizens over sixty-five. I think with the fifteen percent and the reasonable homestead exemption provided for in the other sections, it would make it possible for us to generally operate so far as assessment basis are concerned, and tax responsibility is concerned, as we are at the present time. I urge your adoption of the amendment.

Questions

Paragraph (1): Why should property in incorporated municipalities have the benefit of use value, whereas, property, not in an incorporated municipality, not have that?

Mr. Duval: You mean, you thought...the reasoning is that because the properties in a municipality would be subject to zoning, and the use would be restricted? Is that the theory behind it?

Mr. Kean: That's right.

Mr. Avant: Mr. Kean, another question along the same line: the first part of the second sentence in (A) is pretty clear to me that the legislature shall provide criteria. However, land that is devoted to bona fide agricultural, horticultural or timber usage will be assessed, based on its use for that particular use.

Mr. Kean: That's right.

Mr. Kean: That was the intention of it. For example, you could have a homeowner by an elderly person, who makes that their home, and that property, we'll say, is located in a downtown area where it might even have higher value if she were to sell the home and it could then be used for some commercial purpose, but she prefers to stay there. Under those circumstances, that property would be valued based upon the use of the property to which it's then being put.

Mr. Avant: Well, how would you value, then, say, a hundred and fifty acre tract of land, situated in the middle of the city of Baton Rouge, and surrounded by subdivisions, but to which the owner was devoting it to no use, other than to hold the wall together and decide when he wanted to sell and make a killing. How would you assess that land?

Mr. Kean: Well, then, I think, under those circumstances, it's not being used for any purpose, you'd simply put it on at its fair market value, if it's not being used, except just sitting there as idle land. This would only apply where the property is, in fact, being used for some purpose.

Now, if he goes out there and dumps two or three old hives on there—old cows—would it then become agricultural land?

Mr. Conroy: Mr. Kean, in your explanation, you treated elsewhere, but you did not refer to Paragraph (D) of the committee proposal as well, which deals with the method of review of assessment.

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Mr. Abraham In answering the question posed by Mr. Duval, you stated that the zoning restrictions might restrict the use. He was asking about incorporating municipalities. Well, what do you do in the instance where you have land outside of an incorporated municipality, but which is still subject to parish zoning restrictions?

Mr. Kean Well, we simply were trying to deal with the municipalities problem in connection with this particular use valuation. We were thinking both from the standpoint of the zoning problem, and also from the situation that you could have in the municipalities, where older parts of the town are occupied by people for residential purposes which might not be the highest value, or the highest use value, of that particular property.

Mr. Abraham But, could not the same thing apply to property outside of a municipality? It might be in a shopping center area or an area that is commercial property but may have some old houses in there. Does this deny the...use as a basis in determining its fair market value?

Mr. Kean I don't think it would, Mr. Abraham.

Mr. Womack Mr. Kean, under this proposal, this would greatly reduce the tax liability of the industrial giants, would it not?

Mr. Kean I don't know whether it would or not, Mr. Womack. I just don't have the figures that indicate how they are being assessed over the state at the present time.

Mr. Womack Well, I believe someone had used the figures a little while ago that they were assessed at somewhere between twenty and thirty percent, overall. If that's the case, then, would it not reduce them back to fifteen percent?

Mr. Kean Well, it would...I think in all of these percentages, Mr. Womack, we've got to decide what the percentage applies to. I said earlier, in East Baton Rouge Parish, that they assessed inventory at thirty percent. I would be less than candid if I didn't say further that if you took the actual value of those inventories and use that, you'd probably find that you were closer to ten percent insofar as inventory is concerned. I don't think you can get a true picture of what we're doing at the present time because, in most instances, we're not using fair market value as the starting point.

Mr. Womack But, Mr. Kean, if we can't get a true picture, then, it looks like maybe we ought to recess and let somebody give us some research on it. I...

Mr. Kean Well, I would be inclined to agree with that, Mr. Womack, but we have not been able to develop that kind of information.

Mr. Womack Let me go a little further. The thing that disturbs me is this: That if we have the industrial giants—many of them that's not domiciled in Louisiana—and they're already on a corporate tax structure basis as far as federal income taxes, when they save money here at the expense of the homeowner, the small operator, and then they pay half of it back to the federal government in federal income taxes, I don't think we're making too much progress. The thing that disturbs me is: I'm not convinced that in changing this percentage factor here from twenty to fifteen that you're not going to reduce by one-fourth the tax liability of these kind of people. If you do, then somebody else has got to pick it up.

Mr. Kean Well, as I appreciate it, Mr. Womack, if we go to fair market value and truly use fair market value as the basis against which we apply our percentage ratio, then I'm inclined to think that we would come out about where we are now

because the fair market value is, in my opinion, would be above what we are presently applying the present percentages to.

Mr. Lennox Mr. Kean, if you will recall for a moment the situation described by Mr. Jack Avant and describe for me or define for me bona fide use for agricultural, horticultural, or timber purposes, and see if, perhaps, we can't bring a little more light to bear on that situation.

Mr. Kean Well, I would interpret this to mean that you're using that property for a true, bona fide agricultural use. I can cite you an example: in West Baton Rouge Parish, just across the river, there is considerable acreage that is devoted to sugarcane. There's no way in the world that a sugarcane farmer could afford to pay over four hundred to five hundred dollars an acre for land that's going to be farmed for sugarcane purposes, and still make a living. Now, that property has probably got a greater value than it has as farmland because it might be sold for industry or for commercial purposes.

Mr. Lennox Well, that situation...

Mr. Kean This would protect that agricultural use. That's all.

Mr. Lennox The situation that Mr. Avant described would not meet the test of bona fide agricultural use, as I understand it.

Mr. Kean That's correct.

Mr. Pugh Mr. Kean, is it not a fact that timberland in the State of Louisiana is presently taxed at two cents per acre, except that an additional two and a half percent for all but pulpwood and five percent for pulpwood is charged at the time that that timber is severed from the land, and that the constitution prohibits the taxes being changed on it?

Mr. Kean If you say that's correct, Mr. Pugh, I'll agree.

Further Discussion

Mr. Alario Mr. Chairman, fellow delegates, I rise to, of course, oppose the Kean amendments as offered to you. I see it as nothing more than an attempt to switch the burden of taxes, or those taxes that an industry is now paying, to put it on the backs of the homeowners, the small homeowners of the state. The proposal Mr. Kean has before you, with this amendment and further amendments to come a little later, by bringing the homestead exemption down to twenty-five hundred dollars along with this fifteen percent assessment across the board, would mean, then, that the only homes that would be exempt now would be those below sixteen thousand, six hundred sixty-seven dollars. I'm just figuring, in a particular parish that I'm... I had some figures on, that just a simple twenty thousand home that's assessed at ten percent now is fully covered by homestead exemption, not paying any taxes, assessed for two thousand dollars and covered by the two thousand dollar homestead exemption; whereas a high millage, would now be required to pay on that home, where he wasn't paying any before—thirty-three dollars. That doesn't sound like very much money, and it probably isn't, but, when you're talking about sixty-eight thousand and homes that are thirty-three dollars, then we're talking about 2.2 million dollars. With your adjustment in millage, then who's going to get the break of that 2.2 million dollars? It's going to be the industries that are paying it now that are going to have to now...are going to get the benefit of not having to pay this amount of money. I ask that you would stick with the committee proposal as is, and vote down the Kean amendment.

Mr. Alario: Mr. Alario, the homeowner shouldn't pay thirty-three dollars a year to support the public schools and the public services.

Mr. Alario: Mr. Burson, if the homeowner is not paying it now, I don't want to advocate raising his taxes one red cent, much less thirty-three dollars.

Mr. Burson: That's true even though he's got a forty or fifty thousand dollar home which benefits from all the public services in the parish?

Mr. Alario: Well, of course, there are other means of supporting public schools, too. We're talking about the sales tax he's having to pay on the salary he gets, income taxes, and various other taxes that he has to pay. So, we're not only looking at the thirty-three dollars, Mr. Burson.

Further

Mr. Mire: Mr. Acting Chairman, delegates, ladies and gentlemen, I rise to oppose the Kean amendment principally on--and I'm not an attorney, but I've talked to some of the lawyers here on the floor, and from an awful lot of discussion with an awful lot of attorneys--about the constitutionality of the first paragraph when he talks about land use in incorporated municipalities, how defined that would be. When we talk about land use in farming and agriculture, you can set up priorities that are defined and practices that have been proven through the years and have been proven constitutionally. But, I have never heard of a land-use concept as far as municipal properties are concerned. I think this would sort of let--if it would be permissible--somebody just, say, do what they want to do any sort of priorities any--I believe that this is where--why the Judge has ruled in the Bussie v Long case that we could not do these things, basically what the courts have been doing. I just don't believe it would be constitutional, and I feel that it's a violation of the new taxes from industry to the landowners to the homeowners, particularly with what I know is coming from the very same people--possibly an amendment to keep the homestead exemption at the level that it is today. I urge you to defeat this amendment.

Call: 104

Further

Mr. Ullo: Mr. Acting Chairman, members of this convention, I rise in opposition to the Kean amendment. We've heard a lot this morning, this early in the afternoon, about percentages. But we haven't heard enough about the people of this state, who, in the end result, have to pass upon this constitution. I will say here and now that if the assessors' plan is not adopted, we can say that all our work during the past year will go down the drain. The assessors' plan, as adopted, will give a lot to many of the parishes as far as the ones that have high millage are concerned. I feel that if we do not accept the assessors' plan, many of the homeowners will not have the privilege, in the future, that they have enjoyed in the past. I believe that this will cause stagnation of economic growth and, possibly, a grand exodus of people out of our state. The assessors' plan is a fair plan for the people of this state--the homeowners, the renters, the farmers--and will help to promote the future growth of this state. In this day and age when we have such food shortages and high cost of living, we have to have some built-in incentives that will help to keep the people in the state. I urge you to accept the assessors' plan. I have talked to many of the people who have talked about giving certain people

throughout this state, especially the special interest groups, certain things in this new constitution. We have to keep the people of this state, and let's go forward with our ten and ten percentages and forget about the cane fifteen percent.

Other Discussion

Mr. Alario: Mr. Alario, the homeowner shouldn't pay thirty-three dollars a year to support the public schools and the public services. I am in support of the Kean amendment, and to those of you who have not made up your minds about it, I would hope that you would pay attention. Those who have already decided how you can vote, well, you can keep on milling around and talking. If you start from a proposition that there are serious differences among the sixty-four parishes that will, at best, be very difficult to align, and that any progress in that direction that we make in this convention will be all to the good, then I think you should carefully read the Kean amendment. In my parish, at the end of the session last week, we were suggested to go see the assessor, and to go see the school board, and the cities, and the other parishes. I did go quite a bit of time this week on Sunday, Monday and Tuesday. I came up with a lot of information that I had never seen before, particularly this enormous sheet that our tax assessor uses to compile where our parish gets its money from and what they do with it--all very informational. In Caddo Parish, we have probably the highest assessment ratio in the state. Our city millages run around 20.75 mills and our parish mills are, this year, 33.55 mills on a tax base of this year, in the neighborhood of six hundred million dollars. Our schools operate out of the ad valorem receipts of fifteen million dollars. Our cities' tax millage tax assessment ratio or basis is five hundred million dollars. We run a right fair city with not a whole lot of problems. What I think we need to do, as delegates, in the field of revenue, finance and taxation, and particularly in the field of ad valorem taxation, is to make as little change as we can--not those that we started off with six months ago because those were changes that would wreck parishes like Caddo and cities like Shreveport. Everybody, I believe, knows that he has to bear a share of the governmental expenses for schools and for governmental services in his parish. I don't believe anybody particularly wants to shirk his duty to support the local government. On the other hand, the assessors' proposal, I believe, unnecessarily warps the system of taxation in this state as it exists now. It warps it in favor of the homeowner, and to the detriment of commercial and industrial interests. I am not their spokesman, but I do know where the jobs in this state come from. I do know where we hope the jobs will come from for the young people of this state who will shortly be entering the labor market. I do know what this state will become if we get to be an anathema to new businesses and new industries to come to our state and to give jobs to our people. This we certainly need to preserve; that is, the welcome that this state has for jobs for our people. I believe Mr. Kean's amendment to be a fair middle ground. It will affect Caddo Parish somewhat, but not near so much as it will under the original assessors' proposal. This is the end of the thing that we are sent here to do--do justice for everybody. It is fair to everybody. The federal courts don't again assume the business of telling us how our government shall be run. To have all property subject to ad valorem taxation at fifteen percent of its fair market value, uniformly assessed throughout the state, prevents the incursion into our business by anybody's court system under the United States Constitution. I believe we should adopt it for that purpose and for the timber and the agriculture and the land-use provisions of this thing, but overall, particularly the tax provisions of Section 181 of the Kean amendment, and the duty of the tax assessor to do

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your attention and your support.

In closing, I think this is a good amendment. The tax assessors could be put into this business by making them show, over a period of five years, at least a twenty percent movement each year toward this goal, and we will have solved the knottiest problem to be faced by this convention. I ask your support for the Keam amendment.

Further Discussion

Mr. Lowe Mr. Chairman, ladies and gentlemen of the convention, I rise to make only one point, and that's to remind you of the point that I made when I spoke previously. We have well rooted in our tax base the fact that there are different classes of property being assessed at different percentages. We're here now getting ready to come up with one uniform percent. If we have an area where residences have been taxed at ten percent...have been assessed at ten percent of the fair market value, and at fifteen percent of the fair market value, and business property at twenty percent of the fair market value, and we take all of this property and lump it into one flat percentage of fifteen percent of the fair market value, we're going to have a tremendous shift of taxes from the residences and the landowners to the...from the businesses and the landowners to the residences. Let's not make that mistake of shifting taxes in this constitution. I ask you to vote against this amendment and stick with the proposal of different classes of property.

Questions

Mr. Goldman Mr. Lowe, on this business of the public questioning the fair market value assessment, I can...I want to ask you this question: Wouldn't it be fairly easy for them to question the assessment on homesteads, but wouldn't it be fairly difficult for them to question the assessment on businesses and industry, if they so desired? Isn't that one of the reasons why business and industry should have a higher percentage of assessment than homesteads?

Mr. Lowe Well, that may be one reason, Paul, but I would say the main reason is that we have system, today, that the classes are deeply rooted into that system, and I hate to see us try to come up with any tax reform. So, that would be two reasons.

Mrs. Warren Mr. Lowe, I wanted to ask this for a while, and it does have something to do with this. How many states give the same tax incentive to big business as the State of Louisiana?

Mr. Lowe Mrs. Warren, I really can't answer that because I don't have that information. But, I would think that probably Louisiana gives as good an incentive as any state. I just presume that. But, we haven't found in any of our hearings, any place down the line, that industry is complaining that about the ratio that they are being charged--the percent they are being charged on fair market value. So, I don't see any reason to bring the ratio that we're going to charge on fair market value for land and residences in line with what's being charged for industry. I'm convinced, at this moment, that there is a clear-cut distinction, ratowise, where industry is being charged a higher ratio on the fair market value than industry and other landowners. I hate to see us destroy the...what's well rooted into our tax system today.

Further Discussion

Mr. Nunez Mr. Acting Chairman and gentlemen, Ladies of the convention, I'll make my remarks brief because I see one grave difference in what we're trying to do here and what the plan is proposed to you does. If you take into consideration the fact that...and it sounds good that 'let's treat everybody equal; let's make all property assessed at the same value; let's make all property in the state, whether it's commercial, whether it's

industrial property, whether it's residential property etc., let's put it all at fifteen percent, and let's treat all our citizens the same." But, if you're going to do that, let's go back and say let's don't give exemptions for ten years. Let's don't give exemptions for ten years to industry; let's give it to houses, too. Let's don't charge any taxes at all. When a man builds a house, let's don't have any taxes at all on that house. Let's do that, and then we'll be treating everybody the same. You know, the question has come up time and time again about the old property tax relief formula. Personally, I thought it was a good formula. I suffered in one of my parishes of fifty-two thousand people, and a budget of seven million dollars; I lost a million, five hundred thousand dollars. Everybody says it's simply because your parish--and I'll mention it; it's not Jefferson, although I represent part of that parish--but St. Bernard abused the homestead exemption fund. That's as far from the truth as you can get. Let me tell you what actually happened, and I think it's one line with what we're talking about here. Let me tell you what's going to happen to your growing parishes--your parishes that are experiencing tremendous growth that I experienced over the past ten years. When you bring industry into the parish--and I have had tremendous industrial growth--and you totally exempt that industry, you don't have a nickel's worth of income coming in. Naturally, when you bring this industry in, your land values go up and you bring people in; people naturally follow industries. You bring houses; you bring residences. You need services. That's what happened to Jefferson twenty years ago. It's happened to St. Bernard in the last ten years. The industry brought in twenty-eight hundred employees, and it built about five thousand new, additional homes. Well, who supplies that service? Who builds the sewerage plants? Who provides the police protection? Who provides the garbage pick-up? Who provides the daily services? The local governing authority.

Now, where does the money come from? They can't put it on the industry; the home is virtually exempt; the only place they have to go is to the homeowner. So, what I'm telling you here is that if you tax this property all at the same ratio, that if you want to tax all property at the same value--that is, fifteen percent--let me make an announcement that all property is going to be exempt for ten years when they come into this state. Let's give that homeowner the same break that you're giving industry. I think it would work, then. Possibly a homeowner would settle for the fact that he has a home and he doesn't pay any taxes for the first ten years--none at all. If he has inventory, which we never...we haven't gone into yet, but if he has inventory in that home of any kind, let's exempt that also, or let's make certain provisions that he's not taxed at the same ratio that the other parcels in his home are taxed at. That's what happens, and let's make provisions that on the first year, or the first of the year, we might be able to push that inventory to Detroit or New York or Chicago where it isn't taxed in Louisiana. That's what you have. Then you'd have everybody at parity; then you'd have everybody on the same basis. Then, we can say, let's treat everybody the same. But, as long as you are treating some people...and I vote for all that stuff, by the way, I guess I'm as guilty as anybody for living all these tax breaks to people, and I guess I'll continue to do it because we need jobs and we need industry but, let's don't use the argument that this treats everybody fairly--that this gives everybody the same break. It doesn't. It simply does not. So, I would say for all that stuff, by the way, I think the fairest way, and we've been going 'round and 'round with this thing--not since this convention started, but since the day one and I imagine a lot of other people wrestled with it before I got involved in the problem, but it is a problem. I think the fairest and the most equitable and the best solution is the solution that our committee has come up with--where you tax them at a

have been. You leave industry to get their exemption. They need it; they deserve it. But, let's don't take the burden and shift it from the industrialists, from the commercial enterprises, and I have some myself. In fact, what you're saying, I guess--any of you people out there are businessmen--you are shifting that tax load back to you, but you are really not. But, let's don't shift that tax burden at this particular time from the homeowner and say everybody is going to be taxed equally, at a certain ratio, when you have given such a tremendous advantage to industrial growth for this state. Thank you.

Further Discussion

Mr. Monack Mr. Chairman, members of the convention, as I see Mr. Kean's proposal, it has got to reduce the tax liability of your big corporations. Sammy Nunez presented most of what I had to say, but I'm going to touch a little further. As you reduce the tax liability of these people--and keep in mind that that would increase their profits--and then they pay the federal income tax on their profits, and it goes to Washington. I guess we'd have to try to figure out some other way to get it back, and then getting it back then we surrender more control over our life everyday to a government domiciled far removed from us. But, keep in mind that this responsibility and liability that they save themselves has got to come back. Who is it coming back to? The other property owners. You've got a number of areas, and especially in your fast growing areas, to where it's almost impossible for them to build school buildings because the people that's moving in, that's getting the advantages of the first ten years--and keep in mind that at the end of that ten years a big portion of this property is going to be exempt further because they're going to modernize and ask for additional exemptions. So, somewhere down the line, you're fixing to shift the burden of tax responsibility back to the people that you've been trying to get it away from--that's the individuals who can least afford to pay it. Now, I asked Mr. Kean a few minutes ago as to what this would do. Well do you know if Mr. Kean's plan--the people didn't think it's going to reduce their taxes, they wouldn't be supporting it and promoting it. So, just keep in mind if it's good for them, it is not good for me as a small owner. So, you make up your mind what it's going to do for your people when you go back.

Closing

Mr. Kean Mr. Acting Chairman, fellow delegates, I'll be very brief. I have suggested, by this amendment, what I thought would be a reasonable percentage of value designed to try and achieve, generally, what we have in the state today, so far as the various parishes are concerned. If we stay with the assessors' proposal, as I believe Dr. Ullo referred to it, I just want to point out to you the effect upon East Baton Rouge Parish. There are presently thirty-five percent more homesteaded homesteads on the rolls in East Baton Rouge Parish at the present time, which represent a hundred and forty-five million dollars of tax exempt assessment. If the assessors' plan--which would be ten percent of value for the homestead and a four thousand dollar homestead exemption--is adopted, that would add thirty-five percent more homesteads on the rolls of East Baton Rouge Parish and would increase by fifty million dollars the amount of the homestead exemption in this parish. That would simply mean, with an average assessment in the parish of about fifty mills, that someone has got to come up with five hundred thousand dollars of tax money to make up for the loss of the tax revenue. If we stick to the plan that I've suggested, a realistic percentage ratio for purposes of property

evaluation for taxes, then fifteen percent representative homestead exemption, leave East Baton Rouge Parish--and I believe many of the other parishes of this state--substantially in the same position they are now. For that reason, I respectfully urge your support of this amendment. I think it offers us an opportunity to go forward with the rest of this proposal and come out with some reasonable resolution of it for the people of this state.

Questions

Mr. Chehardy Mr. Kean, are you aware that if this plan, if your amendment would pass, it would then become necessary to probably propose an eight to ten thousand dollar homestead exemption to offset its disastrous effects?

Mr. Kean No, sir, I don't think that would be necessary.

Mr. Chehardy Well, I merely wanted to know if you understood, that's my opinion of your plan.

Mr. Kean Well, that's not mine, Mr. Chehardy.

Mr. Alario Mr. Kean, you said the loss to Baton Rouge Parish would be in the neighborhood of five hundred thousand dollars under this plan. Now, you said there would be some fifty million dollars in assessment that would be knocked off, is that right?

Mr. Kean It would be fifty million dollars more added to the homestead exemption in East Baton Rouge Parish.

Mr. Alario Is that right, Mr. Kean?

Mr. Kean Yes, sir.

Mr. Alario All right, now you said the loss to Baton Rouge Parish would be in the neighborhood of five hundred thousand dollars.

Mr. Kean I'm sorry, it would be five hundred and fifty thousand, excuse me.

Further Discussion

Mr. Toomy Mr. Chairman and fellow delegates, if I might have your attention for a moment--Delegate D'Gerolamo had requested that I deliver to you this message as we enter into discussion of the property tax matter. As you may, or may not know, Delegate D'Gerolamo had previously made plans to be abroad this week, and the message he wished to deliver to you is the following:

"It is with great regrets that I was unable to be with you this week at the time Committee Proposal No. 26 will come to the floor.

My feelings and the wishes of my constituents are very strong in favor of this proposal.

During my campaign for this Constitutional convention, and every opportunity since then, I have carried to Baton Rouge the thoughts of the people of Louisiana. I have promised them the guarantee of private homes against excessive taxation.

Home ownership is the basic principle of our society. Let's not destroy home ownership by excessive taxation. I am sure you will all agree with me on this.

I want to thank all of you for your permission to deliver this message to you. I am sure you will all agree with me on this.

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Amendment

Mr. Poynter Amendment No. 1 [by Mr. De Blieux]
On page 1, delete lines 13 through 17, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. (A) All ad valorem taxation shall be based on fair market value of the property. The legislature shall establish uniform procedures for determining fair market value and shall provide for considering use value in the valuation of bona fide agricultural, horticultural and timber land."

Explanation

Mr. De Blieux Mr. Chairman and ladies and gentlemen of the convention, this amendment you might say, is more in the nature of a technical or a clarification of what we're trying to say. I think, in this particular section, if you will notice we have already taken care of the percentage factoring in Paragraph (B). We've taken care of the assessors listing the property in Paragraph (C). So, therefore, and also if you will recall that we amended Paragraph (E) this morning to allow for the use value in the assessment of timber land, agricultural land, and horticultural land. So, in order to simplify all of these, I have proposed that Section (A) read as I have it here outlined. I think it would make for much more orderly procedure, it would eliminate some words that would be, you might say, mere duplication. I think it would be a better basis on which to proceed in writing a constitution. I ask your approval of the amendment.

Chairman Henry in the Chair

[Previous question ordered. Record vote ordered. Amendment adopted.]

Questions

Mr. Chehardy Senator De Blieux, in other words this would require an assessor to assess your property at actual cash value on the rolls then. Is that correct?

Mr. De Blieux This wouldn't require anything more than is already stated in Paragraph (A) of the present provisions which we already have.

Mr. Chehardy No, sir, what this says here, pardon me...all ad valorem taxation shall be based on fair market value of the property; not on the assessed valuation of the property.

Mr. De Blieux You've taken care of that in Section (C), there is Paragraph (C) and Paragraph (D), Mr. Chehardy.

Mr. Chehardy I'm not worried about that. I'm asking you about your provision.

Mr. De Blieux Well, I'm talking about my provision; it wouldn't that.

Mr. Chehardy It does.

Mr. De Blieux Doesn't change that at all.

Mr. Chehardy Senator De Blieux, your provision would require actual cash value assessment, and the same thing you acquired in your decision, one hundred percent assessment on the books, and the community would apply the tax against it. That's what you're putting in here.

Mr. De Blieux No, Mr. Chehardy, wait; let me explain again. The only thing is that you've already...we have already established the fact that we're going to assess property based upon fair market value. That's what this section says, that you will use fair market value in the valuation of property. We have taken care of the percentages

in the other; it's not going to change any of that whatsoever.

Mr. Chehardy No, sir. I want to again repeat to you that when you state...

Mr. De Blieux Mr. Chehardy, let's don't try to confuse the issue.

Mr. Chehardy I'm not.

Mr. De Blieux If you'd state something right, go ahead, but let's don't try to confuse the issue.

Mr. Chehardy All right, we're not...I'm going to read your language, and you tell me if it doesn't mean...Well, let me ask you this question. Show me in your provision where this provides for other than actual cash value going on the assessment rolls. Show me, for example, where it provides that a percentage of agricultural lands or timber lands or homes will go on the rolls?

Mr. De Blieux Section (A) as it presently reads in the proposal reads that "all property subject to ad valorem taxation shall be listed on the assessment rolls at its assessed valuation which shall be a percentage of fair market value." Now, that's what we're using, fair market value. I've used those very words in this particular section.

Mr. Chehardy That's correct, but this is contradictory to the section you just read, is it not?

Mr. De Blieux It is not contradictory because your percentages are taken care of in Paragraph (B). We have the use factor taken care of in Paragraph (E).

Mr. Chehardy Well, if it's in there, why do we need you to repeat it again here?

Mr. De Blieux Well, I just thought it was a better way of stating than what we already have. Now, if you don't like it, ok. But, I thought we had taken care of the situation in a much better, shorter, concise manner, where everybody could understand it.

Mr. Chehardy Well,...just one more question. Are you aware that no matter which way I read this, I come up with the same interpretation as I did in your suit, which requires a hundred percent assessment which has necessitated this problem in this convention?

Mr. De Blieux Mr. Chehardy, you should go back and read that suit. It would help you a lot.

Mr. Mire Mr. De Blieux, did you know that I read it exactly as Mr. Chehardy, that this means, and does in fact say, that we'll have to list all property at its fair market value? It doesn't say anything about percents, and you delete entirely our provision that states that it will be put on the assessment roll at a percent of fair market value.

Mr. De Blieux No, Mr. Mire, this doesn't say anything about listing the property or assessing the property. This says valuation of the property--in making your valuation. That's all this section says. This doesn't say a thing in the world about assessments or listing. There's nothing here that says the assessors have to list the property for a fair market value. The only thing that they use fair market value in making their valuation.

Mr. Mire Which is exactly what we say, but we say that we would list it at a percent of that--you don't.

Mr. De Blieux So, I just leave out the word percentage; that's all I do because you've taken care of the percentage in Paragraph (B).

Mr. Poynter. Well, I think it would be correct to say that we'll have to list it at a hundred percent of value.

Mr. De Blieux. No, you won't have to do that. That's taken care of, if you do that, in your present...and there's another proposal that says that, and I don't have anything to do with that.

Mr. Rayburn. Senator De Blieux, in the committee proposal it said that property shall be assessed at fair market value, is that correct?

Mr. De Blieux. That's correct.

Mr. Poynter. Now, I'm saying here that the legislature shall establish a uniform procedure for determining the fair market value of property, and you going to make assessors out of legislators?

Mr. De Blieux. No, we're going to have to do that Senator Rayburn, just in the proposal anyway. I think you've got to set up guidelines that the assessors use in determining fair market value. We'll certainly have to do that with reference to agricultural, and horticultural and timber lands.

Mr. Poynter. What would be your idea then of the legislature?

Mr. De Blieux. That is to tell the assessors so that they would be uniform throughout the state, they want a uniform manner of assessment, and so the legislature should provide that uniform procedure.

That's what...that's all that provides for.

Mr. Rayburn. I mean you have no idea what a uniform procedure might be at this time?

Mr. De Blieux. No, I don't, that would be determined by the legislature, just so that all the assessors will be using the same guidelines in determining their assessments.

Amendment

Mr. Poynter. Here's the amendment to (A) the pending amendment at the moment to (A) at the time, by Delegate Schmitt. It's about two paragraphs long.

Amendment No. 1. On page 1, delete lines 1 through 17, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 1. Assessment of Property; Classification; Assessors; Right of Taxpayer, Adjustment of Taxes."

Section 1. (A) All property subject to ad valorem taxation shall be listed on the assessment rolls at its fair market value and assessed at percentage of its fair market value.

Use shall be the basis for determining the fair market value for all land in bona fide use for agricultural, horticultural, and timber purposes. Zoning may be used as the basis for determining the value of all land in incorporated municipalities."

Explanation

Mr. Schmitt. I believe that this amendment would go a long way to curing many of the ills which have existed in the State of Louisiana in the area of property taxes. The reason I believe this, is that it will require the assessor to place upon the assessment rolls the property at a percentage of its fair market value according to which it might be applied for...according to its classification. One of the big problems which has existed

in the State of Louisiana, is that it's impossible for any one to check up on how fairly he is being treated with reference to property taxes, because he goes in and sees his twenty thousand dollar home listed on the rolls for four or five thousand dollars, and he's afraid to object that his neighbor's property is perhaps listed at two or three thousand and is worth the same amount of money as his, because he fears that the four or five thousand dollar level is not according to law. He is correct, because the current law in Louisiana, requires a hundred percent assessment, and if he goes...if he attempts to appeal or to complain about the inequity which exists, the threat is always over his head that his will be raised to what it should be under the law; that is a hundred percent. This prevents any person from coming in and complaining about an inequity which he sees on the tax rolls if he should happen to review these different tax rolls. I believe that this one step would do more to alleviating the current inequities which presently exist in the State of Louisiana, parish by parish and within individual parishes, than any other amendment or any other step which we might be able to take. I claim no pride in authorship in this particular amendment; it was suggested by many people before our committee. This would also require use value for agricultural, horticultural and timber purposes because I have been a strong advocate of this particular position, and I really feel that the cities and the rural areas have a lot in common, and will always have a lot in common. This also provides that zoning is a possible criteria in incorporated municipalities for determining the valuation of property. This would give to the assessor a little bit more ability to cope with the problems of the cities which might differ from those of the unincorporated type of areas. But, the main thing I'd like to hope to accomplish by this particular amendment is to bring about the chance for equity in the State of Louisiana, the chance for an individual to have the right to complain about someone who is getting an unfair tax advantage. It's the chance for an individual to complain about a class of properties which he feels are getting an unfair tax advantage. It's the chance for a person if he thinks that industrial property is improperly taxed to come in and complain about this unfair taxation, to complain about the percentages which are applied, and for this man to know that he is being treated fairly, and not to be at the mercy of the particular assessor. I don't think that the assessors in our state have in the past hurt anyone. I feel though that to provide equity it's necessary that someone know what his rights are before he can actually complain of an aggrievance of these particular rights. I, therefore, request the adoption of this amendment.

Questions

Mr. Lanier. Mr. Schmitt, as I understand the committee proposal in Section (A), it does not require that the property be listed at its fair market value, but that it be listed at its assessed valuation, is that correct?

Mr. Schmitt. That is correct.

Mr. Lanier. Now, doesn't the amendment require that the property be listed at its fair market value?

Mr. Schmitt. That is correct.

Mr. Lanier. Now, did the committee agree to have the property listed at its fair market value?

Mr. Schmitt. Yes, that's correct. The committee agreed to have the property listed at its fair market value.

Mr. Lanier. Now, the committee agreed to have the property listed at its fair market value?

Mr. Schmitt. Yes, that's correct.

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for the person to have his right to his appeal or to complain, it's necessary that the property be listed at the fair market value on the rolls, and also at the assessed valuation on the rolls.

Mr. Lanier Well, the point I'm getting to is this: If we fix the percentages in the constitution, does it really make any difference which way we do it because, for example, if land is listed at ten percent and it's put in the constitution "at its assessed evaluation," all you've got to do is multiply by ten and you know what the fair market as determined by the assessor is, would that not be correct?

Mr. Schmitt Yes, sir, except for the fact that when you get, to as an example, Hibernia National Bank Building, are you going to have on the assessment rolls the percentage for land at the certain amount per square foot, and at the same time, you're going to have combined with that the building itself? I think that if you actually put it down there for the actual fair market value, it would be much more easy for them to determine whether or not it's being equitably applied in that particular case. It would be impossible for a person to go up there when you have ten percent on land and fifteen percent on that building, for them to be able to determine whether or not this is being treated fairly and equitably without the fair market value actually being listed.

Mr. Pugh I notice you used the words bona fide. Did you have in mind perhaps the person or persons may derive a certain percentage of their earnings from these particular agricultural, horticultural or timber purposes?

Mr. Schmitt I have in mind the fact that the legislature could best statute which would define what bona fide means, in order to prevent certain people from taking advantage of this situation.

Mr. Pugh I didn't see anything in here about the legislature doing that, is the reason that I asked.

Mr. Schmitt They'd always have the authority to do it unless you prevent them from doing it.

Mr. Pugh All right. Would you have an objection to a rollback tax, where if, for instance, the holder of any of these lands sold them then he would be obligated to pay a tax based upon what he would have otherwise paid in the last three years, to prevent speculation in these three areas?

Mr. Schmitt I have no objection. In fact, that was brought before our committee by some of the actual farming interests, etc., and I don't believe they have any objection to that at all.

Mr. Pugh All right.

Mr. Schmitt And this has been enacted in several other states already.

Mr. Pugh Yes.

Mr. Dennerly Mr. Schmitt, who determines the percentage of the fair market value under your amendment?

Mr. Schmitt Under this amendment right here, it's not determined who does it. I have later amendments where it shall be established, where it will be debated at that time.

Mr. Dennerly There's no limit...your limitation on the percentage is contained elsewhere, because the way it's written, it could be assessed at a hundred and fifty percent of its fair market value.

Mr. Schmitt Well, if you will note, that in the committee proposal there's no limitation on it either.

Mr. Dennerly Thank you.

Further Discussion

Mr. Mire Chairman, fellow delegates, I rise in opposition to this amendment, and I'm going to try to be very short. It actually confuses, or tends to confuse, our entire proposal. We've spent some nine months practically, speaking about the ad valorem tax proposal maybe like seventy-five percent of the time we met. We've come up with a proposal that in concept is basically agreeable by twenty-two of the twenty-three members on the committee. Some of them don't agree on some percents, some of them don't agree on the amount of homestead exemption, but the concept statewide, the way that it's going to be applied, has been agreed upon by, as I said, about twenty-two of the twenty-three committeemen on our committee. Although Mr. Schmitt's amendment does some of the things that we say we want done in our proposal, it tends to leave others in limbo and just confuse the whole issue. I rise in very serious opposition to it, and would like for you to defeat the amendment, and go with...to keep our proposal as is, as for as the determination of how we are going to, in fact, implement this.

Questions

Mr. Lanier Mr. Mire, for the sake of the record, could you tell us why the committee chose to list the property at the assessed valuation rather than the fair market value, as proposed by Mr. Schmitt?

Mr. Mire Yes, sir, this is to dispel the fright of a hundred percent assessment or putting a hundred percent of your property on the line to be assessed by your local governing authorities, including municipalities and also police juries and school boards. They could, in fact, by statutory law, if they could get it passed in the legislature someday, maybe assess you at one hundred percent of value. Whereas, if we go fifteen and ten whatever percent we agree on, they could never go any higher than that amount.

Mr. De Blieux Mr. Mire, you just mentioned the word one hundred percent; can you find me any place in the law where the word one hundred percent is used with reference to the assessment of property, any place?

Mr. Mire Well, fair market value in my estimation would be what the property is worth, or a hundred percent of the value of the property.

Mr. De Blieux Well, but there's no place in the law where it states where they assess at a one hundred percent of value any place, is it?

Mr. Mire You're absolutely right, but again, I'll say that fair market value...

Mr. De Blieux Now, doesn't actual value and fair market value—aren't they just about synonymous?

Mr. Mire Yes, sir.

Mr. De Blieux Well, aren't we using the words when we use fair market value, isn't that about the same thing as what's in the present law?

Mr. Mire I have no argument with you on that.

Mr. De Blieux All right. Then we're usually... wherever we speak about one hundred percent of value, that's a scare tactic, isn't it?

Mr. Mire No, it's not. If you in fact list at fair market value, that is a hundred percent of the value of the property—as actual value is.

Further Discussion

Amendment

Mr. Poynter Amendment No. 1 [by Mr. De Blieux]. On page 1, delete lines 18 through 25, both inclusive, in their entirety--matter of clarity, Senator DeBlieux, add; and delete the Floor Amendment proposed by Delegate Mire and adopted today--and insert in lieu thereof the following:

"(B) The classification and rate of taxation shall be uniform throughout the taxing district."

Explanation

Mr. De Blieux Mr. Chairman, ladies and gentlemen of the convention, I would like to call to your attention that by inserting these percentages, which you are doing, into our constitution that you are completely changing all of the law with reference to taxing of property. I would wish that each and every delegate could read the revised statutes, reference to tax assessments, and some of the cases that pertain to those, so that you would understand the taxing procedure. There is nothing wrong with it as it is presently written. What is wrong with it is that it had not been enforced. The courts are now on the verge of requiring the assessors to enforce the law. The law as written is equitable on each and every taxpayer; it gives him a right to protest his assessment. We might need a few changes in that regard. Now, I just want to call this to your attention, let you know what you are doing. I know you are not going to adopt this amendment. Therefore, rather than taking up the time of this convention, I'd just like to withdraw it now.

[Amendment withdrawn without objection.]

Amendment

Mr. Poynter Amendment No. 1 [by Mr. Lowe]. On page 1, delete lines 23 through 25, in their entirety--and I'm going to add again, Mr. Lowe: including the Floor Amendment just adopted--and insert in lieu thereof the following:

1. All land-----10%
2. Improvements for Residential Purposes--15%
3. All other Property-----20%

Explanation

Mr. Lowe Mr. Chairman, ladies and gentlemen of the convention, this particular amendment does nothing more than sets new percentages in the original proposal--Committee Proposal No. 26--that you have before you. If you look at line 23, 24, and 25 of the yellow copy of Committee Proposal No. 26, the land, improvements on residential property, and all others are set forth. This amendment merely leaves the proposal as it is, except substitutes for: "All land--10%, Improvements on Residential Property--15%, and All other Property--20%." Now, I don't have to speak a long time on this particular amendment, because we have the same issues involved here that we have had involved in all of the other proposals. First of all, the tax base is important. That is the one thing that I mentioned to you earlier when I came to the podium. Secondly, deeply rooted in our taxing system, our ad valorem taxing system, is a system of classifications for land, residential property, and all others--the "all other" covers primarily businesses. I don't believe that a first change that concept without having a tremendous shift from one class of taxpayer to another class of taxpayer. So, we must have a proposal that is going to provide an adequate tax base. We must meet the obligations that we have contracted for over the periods of years--the school boards, the municipalities. We can't destroy the tax base. We must have an adequate tax base to meet the demands that are there. Secondly, we must continue to provide in our system of taxation those classifications that will more clearly reflect what's deeply rooted in our system today. We can't send this constitution to the people of the State of Louisiana and say,

'We've come up with a system of ad valorem taxes that's going to shift taxes from business to the homeowner.' If we destroy our classifications, that's what we are going to do. We can't say that we are going to shift taxes from the homeowner to the business. Now, I haven't, from the figures that I have seen over the past six months, and from the people that I have had conversations with that are experts in this particular field--ad valorem taxes--assessors and others that have run surveys will tell you, and I'm firmly convinced, that in our present system we have established a percent of market value that clearly reflects a percentage assessment on business property that is at least five percent in excess of that percent on fair market value on residential property. So, I say if we don't maintain that five percent, that we are going to have trouble. At the same time, if we don't have an adequate base, we are going to have trouble. I doubt seriously if ten percent, and fifteen percent, and twenty percent is adequate for many areas. I know that it's not adequate for some areas. It's more than may be needed for a few areas, but with the rollback provision--the adjustment provision--that can be taken care of. Now, I submit to you that with the ten percent, fifteen percent, and twenty percent, we do violence to no one, but we strike a middle ground where, I believe, everyone can find a tax base that will meet the needs that are there today. I sincerely believe in this proposal for no other reason than to tell you that with this proposal you can go home and tell your taxing authorities that you have protected the tax base that they now have. If we do less than this, I feel firmly positive that many of you will go home and will have to admit that you have destroyed a tax base that needed to meet the bonding obligation of your particular area. I ask you to vote for this proposal and maintain the base that we have today.

Questions

Mr. E.J. Landry Mr. Lowe, I have been paying very close attention, and I can't imagine why just a few moments ago a recorded vote was such that you voted either "yes" or "no." Do you remember what you voted a moment ago, when we voted ten, ten, and fifteen?

Mr. Lowe I voted in favor of ten, ten, and fifteen.

Mr. E.J. Landry You voted ten, ten, and fifteen.

Mr. Lowe I believed that we were raising the tax base from what was in the proposal. I would vote for any proposition that raised the tax base, Mr. Landry.

Mr. E.J. Landry Do you remember how many people voted "yes"?

Mr. Lowe I think, probably, there was only a few votes against the proposal, Mr. Landry.

Mr. E.J. Landry Well, there were a hundred and seven people who listened fully to the arguments and voted 107 "yes." I just wanted to know if you remembered that?

Mr. Lowe I remember very well, and I remember why I did it, Mr. Landry, because it raised the tax base from the proposal we had before us at the time. I'm still in favor of raising the tax base to something that I feel is more adequate.

Mr. LeBlau Mr. Lowe, how does the ten, fifteen, and twenty compare to the averages on that types of property, statewide, now? Do you have any idea?

Mr. Lowe Mr. LeBlau, as I mentioned earlier, I think one of our problems is not having information that we can rely on as to the tax base. I can tell you that the reason that I used the percentages in this amendment is because I believe that it closely

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...the surveys that have been run, professional surveys, I understand that the homesteads are probably around fifteen percent and that the business property is in excess—two, three, four, five percent in excess of the homesteads.

Mr. Lowe. Mr. Lowe, moving up to fifteen percent on residential property, I ask you the same question Mr. Chehardy asked earlier this morning. Isn't it true that you have to have a homestead exemption of six thousand dollars, rather than four thousand dollars?

Mr. Lowe. Mr. Flory, a four thousand dollar homestead exemption that's in the constitution, in this particular proposal, would exempt the homestead of twenty-six thousand, six hundred and sixty-six dollars. I believe that exempting a homestead of twenty-six thousand, six hundred and sixty-six dollars is adequate. I further believe that that is going to cover homes that are not being covered today. So, we are giving the taxpayer a break, as I appreciate it. We can just go on the information that we get in talking to different individuals, that probably the average statewide could be set to be around twenty thousand dollars today—the average home that's being exempted. So, we are giving...if that is true, we are giving the homeowner a six thousand, six hundred and sixty-six dollar break on the homestead exemption.

Mr. Flory. But, you are giving him less than what the committee proposes in their proposal. Isn't that correct?

Mr. Lowe. Yes, sir. But, there were many of us that when the committee came with ten thousand at ten percent and with a hundred thousand, we thought was too much. When they came with five thousand at ten percent with fifty thousand, we thought it was too much. I'm merely saying that I believe that twenty-six thousand six hundred and sixty-six is a fair break for the homeowner, and it does better than a status quo because it puts him in a little bit better position than he is in today.

Mr. Toca. Mr. Lowe, are you aware that this twenty percent would almost put the small groceryman out of business? Are you aware of this on all other properties?

Mr. Lowe. No, sir. I'm not aware of that, Mr. Toca. I'm a businessman myself, and I have been paying ad valorem taxes. I would tell you that, I think, the twenty percent...close to twenty percent is what he has been paying, and I think it's a status quo.

Mrs. Warren. Mr. Lowe, I think you came with the other amendment; it was ten, ten, fifteen. Then, you stated up there a minute ago, which concerned me, you say you were for raising it all the time. Now are you going to bring this on? Now spoon-feed us a little bit at a time, and then come back with another one?

Mr. Lowe. Mrs. Warren, you have been sitting in this convention with me for nine and a half months now. You know that I have never spoon-fed you or any other delegate in this convention.

Mr. Warren. I didn't never been on this either.

Mr. Warren. Well, I'm not a spoon-feeder.

Mr. Warren. I'm not a spoon-feeder.

Mr. Lowe. Everything I have...to answer your question directly, Mrs. Warren, everything I have right now is on the table. If this fails, I go with nothing else. If it's passed, I'm happy, and I'll be.

Further Discussion

Mr. Burson. Mr. Chairman, fellow delegates, I rise in support of Mr. Lowe's amendment because I think it is dealing with a difficult problem responsibly. I think that we are breeding irresponsibility when we tell ninety or ninety-five percent of the homeowners in the state, "We are not going to let you pay any tax, any property tax, we are going to soak the rich, or soak industry." As far as I'm concerned, it's an institutionalization of suburban irresponsibility to say that I will own a fifty thousand dollar home in a parish, but I will pay nothing for the schools, for the health units, for the libraries, the roads, the drainage, and the fire protection there. Personal responsibility rather pay my taxes locally where I can influence the way that they are spent, where I have an opportunity to vote whether or not I want those taxes, than I would to have them imposed on me—either by state government or from Washington where I have no vote; all I can do is write the check out and mail it in. Now, I submit to you that we know there are vast discrepancies between the parishes. It's more reasonable to require those parishes that are assessing at a low rate, wherever they are, to roll their millages back—which they can easily do. For those of you that are not familiar with it, when you pass a bond issue today that's to be repaid with a property tax, you've got to roll your millage back periodically, whenever the revenue you are taking in exceeds what is necessary to pay the principal and interest of the bonds. So, I don't see any big problem at all on rolling back these millages. But, as I said earlier today, there is a tremendous problem inherent on this roll forward business. If you complete with a high homestead exemption and in effect eradicate the tax base, I think this amendment retains the base that you need to operate for local public improvements. You know, there are two things that bother me about all this sympathy that I have heard expressed up here today about people who are concerned about the poor and suburban homeowner. I had passed out to you a copy of two pages from a PAR publication in 1971, which was a summary of a survey done by GSRI and PAR on property tax, which they did by looking at sales of property in certain parishes. I am making no reflection on any parishes. I didn't do the survey. I don't know whether the data is correct or incorrect. But, it was interesting to me to note the tremendous discrepancies that you had within parishes. Now, if you've got that big a discrepancy within parishes today, am I going to believe that we are going to see a sudden magical transformation in human nature and in the political process, and people are going to turn around now and reassess all of the property in the parishes to make sure that we don't lose the tax base? I don't believe that. I don't believe in fairy tales again. I really don't understand why, when our grandfathers in the depths of the depression could tax themselves out of the little bit that they had to provide for public education and public improvements, which is the reason why we are in the fortunate economic and educational circumstances that we are today compared to them, why we would want to say that we are going to either have to look to revenue sharing from Baton Rouge, which is going to come from some unnamed source that I'm not aware of—and nobody has told me about yet—or from Washington, where, in order to know whether or not your community can grow in terms of public improvements, you are going to have to depend on what's decided from session to session in the state legislature. For that reason, because I believe that Mr. Lowe's proposal would maintain the tax base, and I believe that it would maintain the classes of property in our...

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home. But, I want you to notice who they put the attack on--the homeowner. The two preceding speakers and the man who proposed this amendment has yet to mention the fact that the industry today in Louisiana has removed seven billion dollars--not million--seven billion from the reach of our taxation. Seven billion. The last four hundred million that was removed recently in the past seven or eight months, less than seven percent of it was for new industry; the majority of it was for additions to existing industry. They don't get up here and tell when Coca-Cola builds a new syrup plant to sell your children and my children and ourselves Coca-Colas, they are exempt from taxation. That's not a new business we are inducing into Louisiana, or Pepsi-Cola, or any other company. They are raping our treasury. But, these sad people who cry because of injustice never talk about the whole, about what the industrial exemption has done to the state. Instead, they take the organization or organizations supported by big industry to feed pap to the people of this state, and I refer to PAR and GSRI who are the father and mother... or others of this pamphlet that Mr. Burson has spread around. Now, I'm saying this publicly; they show in Jefferson Parish--first, let me state this--the very stuff they show here proves what will happen under reassessment: (1) every statement they have made in here in relation to Jefferson Parish is an absolute lie, and I say that to Mr. Stetmel if he is in the audience and I say it to PAR and to GSRI. Now here is why. We, when they made this study, we bothered to see how they were making it. What they did, for example, when they say a house assessed at twenty-one hundred and sold at twelve thousand five, they don't tell you that they took an assessment, say in 1969, and a sale in 1969 and showed the assessment for the '69 sale. It's common knowledge and has been done for generations. That new sale is not reassessed until the next year. So, therefore, had they bothered to check the particular sales in question or twelve-thousand-five-hundred-dollar house, or twelve-three-hundred dollar house, the following year would have been assessed for exactly the same uniform percentage. For example, they show two houses sold for seventy-five thousand each--one assessed at forty-five hundred and one at six. What they don't do is bother to check the next year when we actually assess these properties. The assessment they showed you may have been on the books for twenty years. Those houses would have been put on depending on the year this study was made. I believe at the time it was made we had an eight percent level. They would have been put on at exactly eight percent each, which would have been substantially more than the figures shown here. Now, reassessment statewide, just as these low assessments reflect higher property values of these properties--assessments that have been on the books for years throughout the state as property is sold or reassessed--we are going to get more and more money into this state. If we would give in to the type of percentages that are here proposed by Mr. Lowe, you would bring disaster upon the property owners, the community, the property owners, the homeowners of this state, the likes that have never been seen anywhere in this country. If you want to know how bad the millage picture is, not only in Jefferson, but in about sixty-five or seventy percent of the parishes, you have only to realize that the disaster wrought in New Jersey has been worked with all his hundreds of sales and maybe up to a hundred and thirty mills in some districts. Illinois has suffered. If you have bothered to read the material I gave you, you would see that it's people who make proposals such as these that have lead their states into disaster. I don't want to get up on every case and bother you with this. But, on this, as all I have waited for this convention to try to make sure that we don't let disaster befall our state. We have a judgment requiring a hundred percent assessment. We have to do something to solve it. If you will just excuse me, if I see something that is going to work harm to our people of this state, then I'm going to have to get up and say it. I urge your

defeat of this amendment.

Questions

Mr. Toca Mr. Chehardy, wouldn't you agree this amendment that Mr. Lowe has would make the rich people richer and the poor people poorer?

Mr. Chehardy It would make the rich people poor and make the poor people poverty stricken.

Further Discussion

Mr. Toomy Mr. Chairman, fellow delegates, I too, rise in opposition to this amendment for several other reasons than what Mr. Chehardy had just mentioned. One, I rise in opposition to the distinction made between the percentage evaluation for assessment valuation between all land and between improvements for residential purposes. I see no reason to draw such an distinction, a different percentage figure between the two. This only favors land speculation for one thing, as opposed to residential properties. Further, many of the people I represent, particular the young couples and even the aged are renters, and no one has spoken yet of the renters. The renters would be...rental property would be included under this No. 2 "improvements for residential purposes." I can only see that by having a higher percentage for this residential purposes that the higher taxes for residential purposes, rental facilities, would only be passed onto the renters themselves. Many of these renters not only can afford...cannot afford homes at this time or not willing to buy homes at this time. At least for the people who do own homes, the provision for one thing, as opposed to residential purposes, we provide industrial areas, we provide industrial exemptions. But, no one has thought of the renters. A distinction here between land and residential purposes would only provide for higher taxes for rental property and this would be passed on to the renters. Again, the rise in opposition to the future needs of the encourages land speculation as opposed to residential development; secondly, it would pass the tax burden onto the renters who do not enjoy any exemptions at all. I'll yield to any questions, Mr. Chairman.

[Previous question referred.]

Closing

Mr. Lowe Mr. Chairman, ladies and gentlemen of the convention, I want to tell you in all sincerity that I hope that today we can adopt a tax base that is adequate to meet the future needs of the State of Louisiana and the taxing authorities that spread throughout this great state. There have been many things said up here today about this particular proposal. I'm not going to try to answer all of them. But, let's just take the proposition of higher percentage for residential purposes would do violence to the renters, to the people who are between this particular amendment and the proposal that we have already adopted. There's the five percent spread between residential property and business property in the proposal that we have already adopted. We have no more than a five percent spread right now between the fifteen percent on residential property and the twenty percent on business property. So, there is no justification in that statement. The rollback provision will take care of any excess taxes that could come from a higher base. At the same time that the rollback provisions are taking care of the excess taxes that could come from a higher base, we are at least providing a tax base for those parishes that find themselves in the position that they have been assessing homes at thirty percent, twenty-five percent, twenty-two percent, and twenty percent. Those people have been doing a good job. Those assessors have been doing a terrific job. Now, we will tell them because they have done a terrific job, we are going to penalize; we are going to take your tax

you can't service what you need to service. I hope you take this amendment seriously, because there are many of you that will go home and find out that you will tell your school board and your other taxing authorities that we have destroyed your tax base. I believe that sincerely, or I wouldn't be here with this amendment.

On page 1, delete lines 18 through 25, both inclusive, --add, Mr. Schmitt, including the Convention Floor Amendment No. 1 proposed by Delegate Mire and others and adopted today--in their entirety and insert in lieu thereof the following:

"(B) The classifications of property subject to ad valorem taxation for the purposes of determining assessed valuation are as follows:

- (1) Residential property
- (2) Commercial property
- (3) Industrial property
- (4) Agricultural, horticultural, and timberland property
- (5) All other property"

Mr. Schmitt. The purpose of this amendment is to grant to local governing authorities the flexibility which is necessary for them to deal with the problems of the future. I believe that many of us are failing to see the problems of implementation of a statewide fixed percentage for all purposes. By that I mean not just for local government purposes, but also for statewide purposes if the state should decide to get back into the property tax business. In our discussion with the governor, it was pointed out and requested by the assessors that we be given the right, at a time in the future, to get back into property tax relief fund. Whether you agree or disagree with this is not an issue. I would like to say that by the division of the property into these five specific classifications, it allows a local governing authority to be able to encourage particular types of businesses or particular classes of people to remain within their districts. It allows an area which is primarily agricultural to reduce the assessment to industrial property and, therefore, to encourage industry into that particular area. It allows an area which might want to negotiate with a warehousing type corporation, which may be interested in bringing that into the park, to negotiate with them and to give them a different percentage in their classification in order to encourage that business to come in and create jobs and create other sources of revenue for that particular parish. It encourages the parish which wishes more people to come into it to give a different type of percentage break with reference to residential property. It also allows for a classification for agricultural, horticultural, and timberland property so that if this is necessary for your particular parish, you might use this to encourage the development of that class of property within your parish. Also puts one other broad category which is "All other property." This would primarily apply to movable type of property--as an example, automobiles and other types of property. I feel that this classification is a reasonable type of classification. It's just a recognition of the situation which presently exists in our state, insofar as the assessors presently classify property in many more areas than these. Until we recognize the reality that when you put the ten percent and the fifteen percent into our constitution, the assessors do not have it in their mind to follow this anyhow, that we should give them something

let's give something to the local governing authorities where they can control their future and not

have their future controlled by the assessors, as it has been done so in the past. I don't have to say that the assessors have been in constant fights with the governing authorities in the determination of what the percentage should be and what classifications of property should exist within those particular parishes. I would only point out to you, if you say that there is no classification, that in Jefferson Parish there are at least two classes of property: that is, the homes which are at six percent of the sale value and other types of property --at least that's my understanding--at eight percent. So, there is already a differential or class recognition. I'm sure that this might be necessary. I see no problem with this percentage application. However, as we note, the problems from parish to parish throughout the state vary. Orleans Parish has applied different percentages than this parish; Shreveport has applied twenty-five percent across the board. This is twenty-five percent of current fair market value. Why not leave it at these local governing authorities where they can determine their own future? Why not allow these people to provide the services for their people and to cause them to have the ability to raise the funds necessary to provide these services. I believe that these...either (1) the state should be out of the property tax business and allow this as the exclusive domain of local governing authorities, or that the local governing authorities should not be crippled in their ability to raise taxes in order to support the services of their people. Our committee has consistently put restraints on the local governing authorities when it came to licenses and to incomes taxes, sales taxes, and other types of taxes, so that they would not have the ability to raise the funds necessary to carry out their objectives. I don't feel that this should be the proper philosophy of the State of Louisiana, but this is something that we must decide. If we do not grant to the local governing authorities the exclusive right to the use of the property tax base, they will be severely crippled in the future and will have to go "hat in hand" back to the legislature year after year in order to solve the needs and the problems of the various localities. This plan which eventually will fold...unfold is one which will grant to the local governing authorities the maximum flexibility. It allows the assessor to apply a percentage to the different classifications of property. It allows the assessors to do his job of assessing. But, at the same time, it's subject to the approval of the majority of the local governing authority. I feel...this also...later on, we will have method of appeal in which an individual can raise his complaint so that it can be properly heard and that his grievance can be heard, and he will let go, the voiceless in his community and without the ability to complain about inequities in the property tax situation. I request that...your support for this amendment. Thank you.

Questions

Mr. Schmitt. You mean by "all other property"? You have "residential, commercial, industrial, agricultural, horticultural, timberlands," and then you have "all other property." Would you define what you mean by "all other property"?

Mr. Schmitt. I presume it means... But "all other property" is a catch-all category other than that...those...property. As an example, a tax... those which are specifically excluded...

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Mr. Schmitt As you know, we have specifically listed them. But....you are correct.

Mr. Mire Mr. Schmitt, during our committee meetings, do you recall anybody asking for all of these particular classifications...anybody who testified?

Mr. Schmitt No.

Mr. Mire Thank you, sir.

Mr. Goldman Mr. Schmitt, in your delineation of classifications of property, you forgot to add in there, or did you forget to add in, "professional property"?

Mr. Mire What about "unprofessional property"?

Mr. Goldman Well, where would professional property come in under these classifications?

Mr. Mire I would presume it would be under "all other property". However, the specific definitions would be left up to the legislature.

[Recess vote ordered. Amendment rejected: 6-105. Motion to reconsider tabled. Motion to take up other orders of the day adopted without objection.]

REPORTS OF COMMITTEES *[1 Journal: 112]*

INTRODUCTION OF PROPOSALS *[1 Journal: 113]*

[Adjournment to 9:30 o'clock a.m., Thursday, October 18, 1973.]

